

July 23, 2012

Ms. Judith Enck
Regional Administrator
US EPA, Region II
290 Broadway
New York, New York 10007

Subject: **Drinking Water State Revolving Fund (DWSRF)
Program Capitalization Grant Application for FFY
2012**

Dear Ms. Enck:

As you are aware, the 2012 Capitalization Grant Application was submitted to you on letter dated May 5, 2012. The public participation process corresponding to the DWSRF Intended Use Plan 2011 (IUP) for the use of FY 2011 funds ended June 25, 2012.

We are hereby submitting to you the Final Intended Use Plan for Fiscal Year 2012 which includes the Priority List, as well as the Responsiveness Summary to comments received during the public hearing. DOH received no comments from the general public during the participation process. During the hearing, PRASA ratified their position regarding the projects included in the List.

Please note that the Final 2012 Intended Use Plan that we are herein submitting to you references new requirements stated in the *"Procedures for Implementing Certain Provisions of EPA's Fiscal Year 2012 Appropriations Affecting the Clean Water (CWSRF) and Drinking Water State Revolving Fund (DWSRF) Programs"*, and certain information considered in the *"DRAFT DWSRF Intended Use Plan Check List"*.

The following documents related to the Application were previously submitted to engineer Rivera, EPA-CEPD:

Ms. Judith Enck

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- Work Plan 2012-13 funds – letter dated June 21, 2012
- Final Budget Detail – e-mail dated May 4, 2012
- Public Hearing Announcement – e-mail dated June 6, 2012
- Attorney General Opinion – e-mail dated June 6, 2012
- Acknowledgement Receipt of the Single Point of Contact (SPOC) request to the Puerto Rico Planning Board – e-mail June 6, 2012

For your reference we are also including the Single Point of Contact issued by the Puerto Rico Planning Board.

We look forward to your cooperation and assistance in order to expedite the approval of the FY 2012 grant. The Government of Puerto Rico is fully committed to use the funds requested immediately to continue with the construction of the projects described in the IUP.

Should you or any member of your staff have any questions, please feel free to contact Eng. Javier O. Torres, Director of the Public Water Supply Supervision Division, or Mrs. Eva Hernández, DWSRF Coordinator, at telephones (787) 777-0150, (787) 777-0151, (787) 777-0152.

Cordially,



LORENZO GONZÁLEZ FELICIANO, MD
SECRETARY OF HEALTH

Enclosures

EH/je/Subm. Final 2012 IUP and related docs.

Cc: Mr. José Valenzuela, La Fortaleza
Esq. Guillermo Somoza, Attorney General
Mr. Steve Vida, US EPA- Region II
Eng. José Font, EPA-CEPD
Eng. Jaime Géliga, EPA-CEPD
Eng. Alex Rivera, EPA-CEPD
Eng. José E. Basora, PRIFA

Mr. José Ortiz, PRASA
Eng. Alberto Lázaro, PRASA
CPA Roxana Santaella, PRASA
Eng. José Javier Rivera, PRASA
Mr. Juan Carlos Batlle, GDB
Mr. Jesús García, GDB
Mr. Carlos Collazo, GDB

GOBIERNO DE PUERTO RICO
DEPARTAMENTO DE SALUD

**RESPUESTA DEL DEPARTAMENTO DE SALUD A LOS PLANTEAMIENTOS HECHOS COMO PARTE DEL PROCESO DE
VISTA PUBLICA SOBRE DEL PLAN DE INTENCION DE USO DE FONDOS Y DE LA LISTA DE PRIORIDAD
PARA EL FINANCIAMIENTO DE PROYECTOS PARA EL TRATAMIENTO DE AGUA POTABLE – AÑO FISCAL 2012,
BAJO EL PROGRAMA DEL FONDO ROTATORIO ESTATAL PARA AGUA POTABLE**

NOMBRE	COMENTARIOS	RESPUESTA DEPARTAMENTO DE SALUD
<p style="text-align: center;">Reunión Departamento de Salud y Autoridad de Acueductos y Alcantarillados (AAA)</p>	<p>Previo al proceso de Vista Pública y para la preparación del Plan de Intención de Uso de Fondos y de la Lista de Prioridad para el Financiamiento de Proyectos para el Tratamiento de Agua Potable correspondiente al año fiscal 2012, se utilizó la información suministrada por la AAA mediante reuniones, llamadas telefónicas, comunicaciones escritas vía correo electrónico y postal. Entre las reuniones y/o comunicaciones tomadas en consideración para la preparación de esta Lista están las siguientes:</p> <p>18 de noviembre de 2011 – Durante reunión realizada en el Departamento estuvieron presentes por parte de la AAA la Ing. Lynnette Ramírez, la Sra. Roxana Santaella y el Ing. José Javier Rivera con personal de la AAA. Por parte del Departamento estuvieron presentes el Ing. Javier O. Torres, Director de la División de Agua Potable, la Sra. Eva Hernández y el Ing. Darío Martínez, Coordinadora del Fondo Rotatorio Estatal para Agua Potable y Coordinador de Proyectos del DWSRF, respectivamente. Durante la reunión se discutieron los posibles proyectos a incluirse en la Lista de Prioridad “Project Readiness” 2012. Entre los discutidos figuran proyectos con donativos previos que requerían fondos adicionales para completar su construcción, proyectos previamente</p>	<p>Como parte de la solicitud anual de fondos a la Agencia Federal de Protección Ambiental (EPA) para capitalizar el Fondo Rotatorio Estatal para Agua Potable (DWSRF) se coordina con la AAA y la EPA la preparación del Plan de Intención de Uso de Fondos (IUP) bajo el Programa de DWSRF el borrador de la Lista de Prioridad para el financiamiento de proyectos para el tratamiento del agua potable y se obtiene la información relacionada con los proyectos que serán incluidos en la lista contenida en el IUP. A base de la información obtenida previo al proceso de vista pública se preparan los borradores de los documentos que son sometidos a vista pública.</p> <p>Mediante carta a la AAA, fechada el 5 de marzo de 2012, se le notificó sobre la cantidad de los fondos 2012 disponible para el financiamiento de infraestructura de agua potable. El DS procedió a preparar el borrador de la Lista de Prioridad tomando en consideración los insumos de la AAA.</p> <p>Se le solicitó información a la AAA para revisar la elegibilidad de los proyectos bajo la partida de “green projects”, así como para conceder subsidios adicionales en forma de donativo para los proyectos.</p>

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NOMBRE	COMENTARIOS	RESPUESTA DEPARTAMENTO DE SALUD
<p>Ing. Alberto Lázaro Director Ejecutivo Infraestructura Autoridad de Acueductos y Alcantarillados (AAA)</p>	<p>incluidos en el “Multi Year List del año fiscal 2011 y proyectos incluidos en el Acuerdo de Transacción con la AAA (“Consent Decree”).</p> <p>21 de marzo de 2012: Carta de la AAA al Ing. Javier O. Torres, Director de la División de Agua Potable, donde la AAA solicita la inclusión de dos (2) proyectos en el “Project Readiness List 2012”. La AAA solicita en dicha carta que se le otorgue todo el dinero disponible para construcción de proyectos y el por ciento de la asignación determinada para dar en calidad de donativo. Esta carta fue adelantada vía correo electrónico. En dicha carta la AAA incluyó, además, las tablas de los itinerarios de desembolso de fondos (“Disbursement Schedules”), y solicitó la inclusión de los siguientes dos proyectos del “Project Readiness 2012” con el fin de completar su construcción:</p> <ol style="list-style-type: none"> 1. Valenciano WTP, Juncos 2. Las Marías WDS - Phase II-B <p>En cuanto a la Lista de Prioridad “Multi Year 2012”, la AAA solicita se mantengan en la misma los siguientes diez (9) proyectos:</p> <ol style="list-style-type: none"> 1. Negros – Corozal 2. Yauco-Río Prieto 3. Aibonito Urbano WTP – Aibonito 4. Juana Díaz 5. Quebradillas – Guajataca 6. Caguas Sur WTP 	<p>El DS procedió a la evaluación de la solicitud sometida por la AAA y su concordancia con el borrador de la Lista de Prioridad que se preparara.</p> <p>Estos documentos fueron sometidos a siguientes agencias invitándoles a participar en la Vista Pública y a someter sus comentarios a los documentos: Agencia de Protección Ambiental Región del Caribe y Región II (EPA, por sus siglas en inglés); Autoridad de Acueductos y Alcantarillados (AAA); Autoridad para el Financiamiento de la Infraestructura de PR (AFI); y el Banco Gubernamental de Fomento para PR (BGF).</p>

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NOMBRE	COMENTARIOS	RESPUESTA DEPARTAMENTO DE SALUD
	<p>7. Caguas Sur - Beatriz Ward 8. Río Culebrinas – Aguadilla 9. Rincón – Cidra</p> <p style="text-align: center;">PROCESO DE VISTA PUBLICA</p> <p>El período de participación pública comenzó el 24 de mayo de 2012 y terminó el 25 de junio de 2012. Se emitió un Aviso Público a la ciudadanía en general haciendo la correspondiente invitación a participar en la Vista Pública. Los documentos fueron sometidos a todas las agencias pertinentes. Se invitó al público en general, a través de Aviso publicado el 24 de mayo de 2012 en periódico El Vocero, a participar en la Vista Pública y/o revisar los documentos disponibles en las oficinas del Departamento de Salud y someter sus comentarios.</p> <p>31 de mayo de 2012 – Se llevó a cabo la Vista Pública. La Lcda. Wendy Sostre, de la Oficina de Asesores Legales, fue el Oficial Examinador asignado a la Vista Pública y la Sra. Eva Hernández, Coordinadora del Programa Fondo Rotatorio Estatal para Agua Potable (DWSRF) del DS actuó como Oficial Técnico.</p> <p>Asistieron a la misma la Sra. Roxana Santaella Directora Auxiliar de Asuntos Administrativos y Financiamiento de la AAA, el Ing. José Javier</p>	

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NOMBRE	COMENTARIOS	RESPUESTA DEPARTAMENTO DE SALUD									
<p>Sra. Roxana Santaella. Directora Auxiliar Asuntos Administrativos y Financiamiento AAA</p>	<p>Rivera, del Departamento de Infraestructura de la AAA; y el Ing. Darío Martínez, Coordinador de Proyectos del DWSRF-DS.</p> <p>La CPA Roxana Santaella, de la AAA, en representación del Ing. Alberto Lázaro Director Ejecutivo de Infraestructura, reiteró la posición de la AAA en cuanto a los proyectos de construcción de infraestructura de agua potable para los cuales dicha agencia solicitara, mediante carta del 21 de marzo de 2012, la totalidad de los fondos disponibles del año fiscal 2012 asignados al DWSRF. La señora Santaella entregó durante la Vista Pública carta fechada 23 de mayo de 2012, ratificando la posición de la AAA sobre los proyectos incluidos en la Lista de Prioridad ("Project Readiness List 2012" y "Multi Year List 2012") y que la AAA solicitaba todo el dinero disponible para los proyectos sometidos y solicitaba además el subsidio correspondiente que concede la ley federal en calidad de donativo.</p>	<p>Luego de analizar los planteamientos presentados durante la Vista Pública mediante comunicaciones telefónicas y escritas del personal de la AAA (Ing. Alberto Lázaro, Sra. Roxana Santaella y el Ing. José J. Rivera) recibidas durante el período de participación pública, se prepararon los documentos finales del Plan de Intención de Uso de Fondos y la Lista de Prioridad 2012. Por tanto, el DS determinó:</p> <p>A. Que los dos (2) proyectos inicialmente sometidos por la AAA para ser incluidos en la Lista de Prioridad "Project Readiness List 2012", permanecieran en la Lista. Los proyectos mantuvieron las prioridades y rangos calculados, como sigue:</p> <table border="1"> <thead> <tr> <th>Proyecto</th><th>Rango</th><th>Prioridad</th></tr> </thead> <tbody> <tr> <td>Valenciano WTP, Juncos</td><td>1</td><td>240</td></tr> <tr> <td>Las Marías WDS, Fase II-B</td><td>5</td><td>115</td></tr> </tbody> </table> <p>B. Que el DS otorgará a la AAA en subsidio un 20% de los fondos del Donativo de Capitalización o \$1,795,000 en calidad de donativo basado en la elegibilidad y cumplimiento de los proyectos y conforme al Sistema de Prioridad vigente. Se asignó el</p>	Proyecto	Rango	Prioridad	Valenciano WTP, Juncos	1	240	Las Marías WDS, Fase II-B	5	115
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<p>Ing. Alberto Lázaro Director Ejecutivo Infraestructura Autoridad de Acueductos y Alcantarillados (AAA)</p>	<p>23 de mayo de 2012 – A través de carta dirigida al Ing. Javier O. Torres, Director de la División de Agua Potable del Departamento de Salud, la cual fue entregada por la señora Santaella el día de la Vista Pública, la AAA ratifica la posición presentada en la Vista Pública.</p> <p>No se recibieron comentarios adicionales de parte</p>										

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	<p>de la ciudadanía en general durante la Vista Pública ni dentro del período de participación pública. Las agencias directamente relacionadas con el uso de los fondos federales (Agencia de Protección Ambiental, Banco Gubernamental de Fomento, y la Autoridad para el Financiamiento de la Infraestructura de Puerto Rico no emitieron comentarios.</p>	<p>subsidio al proyecto de “Las Marías Water Distribution System - Fase II-B” por la cantidad de \$1,795,000.</p> <p>C. Que se mantendrán en el “Multi Year List 2012” los siguientes nueve (9) proyectos:</p> <ol style="list-style-type: none"> 1. Negros – Corozal 2. Yauco-Río Prieto 3. Aibonito Urbano WTP – Aibonito 4. Juana Díaz 5. Quebradillas – Guajataca 6. Caguas Sur WTP 7. Caguas Sur - Beatriz Ward 8. Río Culebrinas – Aguadilla 9. Rincón – Cidra



Puerto Rico Planning Board
Office of the Governor
Government of Puerto Rico

Roberto Sanchez Vilella Government Center
De Diego Avenue - Stop 22, Santurce
P.O. Box 41119, San Juan, P.R. 00940-1119

**COMMENTS AND RECOMMENDATIONS OF THE SINGLE POINT OF CONTACT
INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS
EXECUTIVE ORDER 12372**

APPLICANT NAME: Puerto Rico Department of Health

ADDRESS: PO Box 70184
San Juan, P.R. 00936-8184

PROJECT DESCRIPTION: Capitalize the Drinking Water State Revolving Fund

PROJECT LOCATION: Puerto Rico - Islandwide

FEDERAL ADMINISTERING AGENCY & OFFICE: US Environmental Protection Agency
Office of Water

CATALOG NUMBER / PROGRAM TITLE: 66.468 / Capitalization Grants for Drinking Water State Revolving Funds

STATE APPLICATION IDENTIFIER (SPOC NUMBER): PR (G) 12-86-0531-274-S

The Single Point of Contact certifies that it has reviewed the notification and supporting document for the above project. As result of the review, it has been determined that the proposed project is consistent with the comprehensive plans and programs developed or in the process of development for Puerto Rico. It also does contribute to the achievement of state and local objectives as specified in Section 401(a) of the Intergovernmental Cooperation Act of 1968 and Section 301 of Title 3 of the United States Code. This certification is for the exclusive consideration of SPOC purposes and requirements and does not waive, constitute or substitute any site, preliminary, construction, subdivision, or use permit that applicant may be required to obtain or solicit according to the applicable laws and regulations of the Puerto Rico Planning Board and / or of any other agency of the Commonwealth of Puerto Rico.

COMMENTS AND RECOMMENDATIONS OF ENTITIES CONSULTED:

The Federal Proposals Review Office (SPOC) endorses this proposal.

A COPY OF THIS CERTIFICATION MUST BE ATTACHED TO THE APPLICATION.

AS PER ADMINISTRATIVE BULLETIN 4184 AS AMENDED, APPLICANT MUST NOTIFY SPOC OF ACTION TAKEN BY THE FEDERAL AGENCY NO LATER THAN FIVE (5) DAYS AFTER BEING FORMALLY NOTIFIED.

PUERTO RICO PLANNING BOARD
Single Point of Contact


RUBÉN FLORES MARZÁN
Chairman

COMMONWEALTH OF PUERTO RICO
PUERTO RICO DEPARTMENT OF HEALTH

INTENDED USE PLAN 2012

July 2012

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1. INTRODUCTION

The Legislature of Puerto Rico enacted Act No. 32 of July 1997 and amended Act No. 5 through of Act No. 193 of December 26, 1997 which in conjunction with the passage of the 1996 Amendments to the Safe Drinking Water Act (SDWA) by Congress provides the Commonwealth with the authority to establish a Drinking Water Treatment Revolving Loan Fund (DWSRF) Program. In September 15, 1998 the DWSRF was initially capitalized with the funds from 1997 and 1998. To continue capitalizing the DWSRF the Commonwealth is applying for a federal Capitalization Grant of approximately \$8,975,000 from the Federal Fiscal Year (FFY) 2012 allotment. Monies appropriated by the Commonwealth will be used to provide federally mandated state matching funds of at least 20% and will also provide any required dollar to dollar match for any set-aside that may be established within the DWSRF program. The Intended Use Plan (IUP) is the planning document for explaining how all DWSRF funds, including the federal fiscal year (FFY) 2012 allotment, will be used. This Program will help public water systems finance needed drinking water projects. The DWSRF is administered by the Puerto Rico Department of Health (DOH) and will be assisted in said administration by the Puerto Rico Environmental Quality Board (PREQB) and the Puerto Rico Infrastructure Financing Authority (PRIFA).

The DOH, acting on behalf of the Commonwealth of Puerto Rico ("Commonwealth"), hereby submits to the U.S. Environmental Protection Agency ("EPA"), as part of its annual application for a Capitalization Grant under Section 1452 of the Safe Drinking Water Act, as amended (the "Act"), an Intended Use Plan ("IUP") which meets the requirements of Section 1452 of the Act.

The Fiscal Year (FY) 2012 Consolidated Appropriations Act (P.L. 112-74)

(Appropriations Act) carries forward and amends requirements from previous fiscal year appropriations acts affecting the Drinking Water State Revolving Fund program for FY 2012. These procedures address the implementation of the requirements and set forth administration priorities. Thus, changes to the requirements of the Program regarding additional subsidization, the green project reserve and the Davis Bacon requirements can be appreciated in these procedures. During this current fiscal year the additional requirements affecting the DWSRF Program, related to Additional Subsidization, Green Reserve, Davis-Bacon, and Reporting will prevail with variations.

In addition, there are certain administration priorities under which EPA encourages the states to work with potential SRF funding recipients for in order to provide funding support for robust systems / wide planning or improving sustainability of water infrastructure that:

- consider the full life-cycle costs of a range of alternatives, including green infrastructure and conservation approaches,
- are consistent with community goals and objectives, and
- include a financial strategy to ensure that the infrastructure can be sufficiently operated, maintained and replaced over time.

For background regarding this provision's application in previous years, please refer to Attachment VII (EPA Memoranda of Nov 30, 2009 and May 20, 2011(Attachment 5 and 6 of the 2012 Procedures)).

Following these new requirements are described.

Requirements for FY 2012 Consolidated Appropriations Act (P.L. 112-74), are as follows:

1.1 Additional Subsidization

The Appropriations Act states: "*Provided further*, That not less than 20 percent but not more than 30 percent of the funds made available under this title to each State for Drinking Water State Revolving Fund capitalization grants shall be used by the State to provide additional subsidy to eligible recipients in the form of forgiveness of principal, negative interest loans, or grants (or any combination of these), and shall be so used by the State only where such funds are provided as initial financing for an eligible recipient or to buy, refinance, or restructure the debt obligations of eligible recipients only where such debt was incurred on or after the date of enactment of this Act."

In compliance with the law and thus, targeting subsidies, the DWSRF program has since its inception provided additional subsidization as authorized by law but circumscribed to those communities in need that meet the Commonwealth's definition of "disadvantaged," and limited it to up to or not to exceed 30 percent of the capitalization grant. Since FY 2010, the requirements are more demanding and expansive. For FY 2012, they require States to provide not less than 30 percent in additional subsidies, to recipients in the form of forgiveness of principal, negative interest loans , or grants (or any combination of these) to any "eligible recipients" of DWSRF assistance.

For several years DOH has been able to provide additional subsidies in the amount of \$20.8 millions under this reserve in order to avail the construction of infrastructure, as well as a counteraction to the global economic distress/rescission. In targeting additional subsidies, Puerto Rico will provide not less than 20% (\$1,795,000) but not more than 30 percent (\$2,638,500) of the FY

2012 capitalization grant to provide additional subsidization in the form of grant, as established in the EPA Memorandum Procedures for Implementing Certain Provisions of EPA's Fiscal Year 2012 Appropriations Affecting the Clean Water and Drinking Water State Revolving Fund Programs. For this fiscal year DOH will not exceed 30%. The recipient of the grant must identify projects within certain categories as defined by the Commonwealth. See section 8.2.4.

In fact for this fiscal year Puerto Rico will be awarding or providing \$1,795,000 or 20% of its Capitalization Grant as additional subsidy to the Las Marias - Phase II-B project, which will be in the form of grant and they will be subject to compliance with the regulations at 40CFR Part 31.

1.2 Green Project Reserve (GPR)

The provision in the Appropriation Act states that: "*Provided further, That for fiscal year 2012, funds made available under this title to each State for Drinking Water State Revolving Fund capitalization grants may, at the discretion of each State, be used for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities.*"

For several years DOH has been able to use funds in the amount of \$8.5 millions under the Green Project Reserve that were directed towards water and energy efficiency. Notwithstanding, during this year Puerto Rico has not been able to identify green infrastructure within the projects that will be funded from the FY 2012 funds and, thus, will not use monies provided by this grant to address green infrastructure funds for eligible projects, water or energy efficiency improvements, or other environmentally innovative activities, as established in the (FY 2012 Consolidated Appropriations Act (P.L. 112-74) (Appropriation Act).

1.3 Davis-Bacon Requirements

The Appropriations Act states: "For fiscal year 2012 and each fiscal year thereafter, the requirements of section 1450(e) of the Safe Drinking Water Act (42 U.S.C. 300j-9(e)) shall apply to any construction project carried out in whole or in part with assistance made available by a drinking water treatment revolving loan fund as authorized by section 1452 of that Act (42 U.S.C. 300j-12)."

As stated by the Appropriations Act, the Davis-Bacon wage requirements "apply to construction of all projects carried out in whole or in part with assistance made available by a DWSRF program during FY 2012 and thereafter." Therefore, this requirement is now permanent for both SRF programs.

In order to comply with the Davis-Bacon requirements, the Commonwealth will include in all assistance agreements, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project the provisions in the FY 2012 Appropriation Act a term and condition requiring compliance with the requirements of section 1450(e) of the Safe Drinking Water Act (42 U.S.C.300j-9(e)) in all procurement contracts and subgrants, and it will require that loan recipients, procurement contractors and subgrantees include such a term and condition in subcontracts and other lower tiered transactions. All contracts and subcontracts for any construction project carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of \$2,000 the contract clauses as stated in Attachment 6 of the Procedures for Implementing Certain Provisions of EPA's Fiscal Year 2012 Appropriations Affecting the Clean Water and Drinking

Water State Revolving Fund Programs entitled "Wage Rate Requirements under FY 2012 Appropriation."

1.4 Reporting Requirements

The conference committee's Joint Explanatory Statement for the Appropriations Act directs the Agency to "report on how EPA and the States have used the additional subsidization authority, including information on the number and amounts of loans awarded with additional subsidization, recipient communities, and descriptions of projects funded. " States shall report quarterly in the DWSRF Project and Benefits Reporting (PBR) systems on the use of all SRF funds. This information will also need to be included in the Annual Report. Quarterly reporting shall include use of the funds for the GPR and Additional Subsidization as described in paragraph below, as well as information on the environmental and public health benefits of SRF assistance agreements, as described in paragraph below. "

1.4.1 Data Elements

The CBR/PBR and the Annual Report must contain information on the progress made in meeting the additional subsidization requirements for both SRFs and the GPR requirements for the CWSRF, as well as any green projects funded by the State for the DWSRF. (Note: For the DWSRF, it is the State's choice to fund green projects. If a State decides to fund green projects, the data about the projects must be reported to PBR.)

The following data elements must be entered quarterly into CBR/PBR starting with the first quarter in which the assistance agreement is made

and a list containing the following information must be included in State Annual Reports. (Additional clarification on the items listed below is provided in CBR/PBR.)

- a. Assistance Recipient Name
- b. Total amount of SRF assistance provided
- c. Project name and identification number
- d. Project Location
- e. Type of additional subsidy (grant, principal forgiveness, negative interest).
- f. Amount of additional subsidy
- g. Y/N – Would the recipient have been able to afford a loan without the additional subsidy (using the States' own criteria for making this determination, such as use of their SRF loan evaluation criteria)?

For projects that receive funding under the Green Project Reserve for the CWSRF or which are funded as green projects at the State's discretion for the DWSRF, the following additional data elements must be entered quarterly into CBR/PBR and a list containing the following additional information must be included in State Annual Reports. (Additional clarification on the items below is provided in CBR/PBR.)

- a. Type of project (green infrastructure, water efficiency, energy efficiency, environmentally innovative).
- b. Amount of SRF funding for GPR portion of the project

- c. Of the total amount of GPR funding, the amount of subsidy provided (if any)
- d. A brief description of the project (i.e., rain garden, renewable energy at POTW, water efficient fixtures).
- e. Population served by the project (not required for CWSRF nonpoint source projects)

1.4.2 Environmental/Public Health Benefits Reporting

In FY 2010, the DWSRF program identified project level data to be reported quarterly to the Drinking Water Project and Benefits Reporting System (PBR) for the base program. These data elements will be used for states' quarterly reporting in FY 2012. The data elements are identified in Attachment 8 of the FY 2012 Procedures, and will be used for reporting environmental/public health benefits of DWSRF assistance agreements.

The Project Benefits Reporting System (PBR) collects project-level data elements to assist the State in meeting reporting requirements and better gather and report information for internal and external reports line the NIMS. It is a tool where the State can demonstrate measurable contributions of the DWSRF program to supporting Safe Water Act goals. It is a communication conduit between State and EPA Regions. Informative data can be gathered at a state, regional and national level for overview purposes.

The data elements identified in the above mentioned Attachment 8 must be reported in the Annual Report. Summary reports, compiling the quarterly data, can be generated by PBR and may be included as an attachment to the Annual Report to meet this reporting requirement.”

Puerto Rico will be reporting quarterly in the DWSRF Project Benefits Reporting (PBR) system on the use of all SRF funds. Annually, DOH has committed in the preparation of the NIMS. It is DOH’s intention to continue participating in the preparation of the NIMS and will use the resources of the PBR and NIMS on line to enter this information. Quarterly reporting shall include use of the funds for the GPR and Additional Subsidization, as well as information on the environmental benefits of SRF assistance agreements. This information will be included in the Annual Report.

This Intended Use Plan (IUP) includes:

- an anticipated financing schedule for this IUP period;
- specifics on how DOH proposes to use available DWSRF funds;
- a description of the goals (short and long term) of the DWSRF program;
- a description of the state DWSRF program’s coordination of funding priorities with the state drinking water enforcement agency
- Readiness Project Priority List of eligible projects to receive DWSRF financing;
- cost estimates for listed projects;
- an estimate of funds anticipated to be available for financial assistance;
- criteria for selecting projects to receive financial assistance;

- criteria for determining which communities qualify for hardship loan;
- criteria for determining systems qualifying for the additional subsidization if applicable;
- criteria for determining equivalency projects;
- the project scoring, ranking and selection system; and
- a response to comments on the proposed ranking system;
- a discussion regarding the state's strategy to responsibly and expeditiously make use of set-asides unliquidated funds from capitalization grants still open from more than two years earlier than the creation of the IUP;
- indicates if the state is designating green projects and the method-criteria used for designating, if applicable;
- indicates if the state accomplished all the previous Work Plan enumerated goals.

2. SHORT-AND LONG-TERM GOALS

The SDWA Amendments of 1996 (Public Law 104-182) authorize the DWSRF to assist public water systems finance the cost of infrastructure needed to achieve or maintain compliance with SDWA requirements and to protect public health. The SDWA Amendments also establish strong new emphasis on preventing contamination problems through source water protection and enhanced water system management. Central to this emphasis is the development of Commonwealth prevention programs, including source water protection, capacity development and operator certification.

The DWSRF will help ensure that the Commonwealth's drinking water supplies remain safe and affordable and that drinking water systems that receive funding will be properly operated and maintained. The objectives of the DWSRF program include achieving

compliance with the SDWA, addressing public health priorities, assisting systems to ensure affordable water and maintaining the long-term viability of the Fund. It is also DOH's goal to maximize the amendments to the law and regulations in order to provide more benefits when undertaking drinking water infrastructure construction. As an example of this, during the last years DOH has been able to use funds under the green project reserve that were directed towards water and energy efficiency, as well as to provide additional subsidies in order to avail the construction of infrastructure and thus provide the means to counteract the global economic distress/rescission, as stated previously.

2.1 Short-Term Goals

- Establish and maintain a continuous technical assistance support process available to drinking water systems for availing compliance.
- Identify and determine feasible and affordable general compliance action plans available for systems implementation.
- Coordinate a mechanism or process for consolidating and/or eliminating existing non-viable small public drinking water systems.
- Use funds under the set-asides to establish a mechanism to assist and evaluate systems in order to improve their compliance and assure public health protection.
- Establish a financial assistance mechanism to provide small systems that are in non-compliance, due to technical, financial and managerial reasons, with the necessary tools to foster compliance and access to funds and subsidies.
- Evaluate alternative solutions by assessing Best Management

Practices (BMP) and Best Available Technology (BAT) to avail systems compliance.

2.2 Long-Term Goals

- Focus on providing assistance to systems that are in the process of attaining and maintaining capacity.
- Promote and maintain an infrastructure construction program for the drinking water facilities of the Commonwealth.
- Evaluate the DWSRF operating structure to ensure the program is administered in a manner that assures its revolving nature in perpetuity.
- Assist PRASA in their quest to improve drinking water quality and dependability in the Commonwealth.

3. FINANCIAL STATUS/TOTAL DWSRF MONIES

Initial capitalization for the Commonwealth DWSRF program was provided from the 1997 and 1998 federal Capitalization Grants and Commonwealth matching dollars. The minimum state match requirement is 20% of each federal award. The state match requirement for the State Program Management Set-Aside will be met with-in-kind services provided by PWSS staff and a dollar-to-dollar appropriation from the Commonwealth, if necessary. As of March 2012 there are no monies earned from loan repayments, including accrued interest, available in the fund for providing assistance in addition to the annual capitalization grant.

The following table provides information of the funds available from previous grants and cash draws executed.

Program Name *	Previous Grants Awards	Cash Draw as of May 23, 2012	Outstanding Obligations	Amount Available	Amount Request FFY 2011 Grant	Amount Request FFY 2012 Grant
Tech. Assistance**	\$3,102,134	\$2,479,256.73***	\$612,877.27	\$ -0-	\$298,360****	\$179,500

* There is no work plan required for administrative set-aside. The Commonwealth of Puerto Rico established the administrative set aside in the amount of \$359,000 or 4% of the \$8,975,000 FFY 2012 Capitalization Grant. Also, \$417,011 will be claimed from banking that is needed for the operation of the program for a total of \$776,011.

** The amount of \$179,500 or 2% of the \$8,975,000 FFY 2012 Capitalization Grant was established for technical assistance.

*** This amount includes cash draws submitted to GDB that up to the date of this report are pending execution.

**** Includes \$110,000 previously banked.

Concerning the outstanding obligations, following is the detail of use of \$612,877.27.

UPR Contract	Rent	Salaries	Other	Total
\$ -0-	\$ -0-	\$396,371.22	\$214,884.22*	\$612,877.27**

* Corresponds to contracts with Ricoh, UPR-MSD and a private entity.

** Includes \$1,621.83 for Travel.

In regard to the contract with the University of Puerto Rico, it ended in June 2011. Activities have been completed. Cash draws in the amount of \$313,147.33 were submitted to the Government Development Bank and are pending execution. As of June 30, 2011, there is a remaining balance of \$173,263.51 pending submittal of final reports and invoices by the UPR.

Related to the contract/partnership with a private or public entity, DOH requested proposals. Currently, it was developed and submitted by the entity. DOH evaluated it and is in the process of executing / implementing of an twenty-four months contract/partnership with a private or public entity from September 2012 to March 2014 in the amount of approximately 196,000.00 to continue a Circuit Rider program for approximately forty-four (48) systems. Monthly visits to each system will be undertaken

during the project period. An estimate of \$96,000.00 will be cash drawn during the first year of the project (one to twelve months) based on activities undertaken. At least one visit every month to each system will be undertaken for the systems. An estimate of \$100,000.00 will be cash drawn during the second year (eleven to twenty-four months) based on activities undertaken.

CONTRACT/PARTNERSHIP WITH PRIVATE OR PUBLIC ENTITY		
2012-13	2013-14	Approximate Total
\$96,000.00	\$100,000.00	\$196,000.00

There are other grants open whose projects are under construction. Also, there are grants open whose loans are pending execution as soon as this loan is executed, and the projects start their construction, these funds will be moved. The cash draw proportionality for FY 2012 funds will be 81.71% federal and 18.29% state and is also described in the disbursement schedules. It is important to note that the funds corresponding to the state match in the amount of \$1,795,000 will be provided to the Department of Health by the Office of Management and Budget of the Government of Puerto Rico. The proposed sources and uses of the DWSRF for this IUP are as follows:

SOURCE	2012	Banked	TOTAL
Capitalization Grant	\$ 8,975,000		\$ 8,975,000
State Match	1,795,000		1,795,000
Total Sources	\$10,770,000		\$10,770,000
Uses Set-Asides (ref. to Sec. 4, Set Asides, for detailed description of allocations)			
Administration (4%)	\$359,000	\$417,011	*\$776,011
Technical Assistance (2%)	\$179,500	--	\$179,500
Total Set Asides and funds banked	\$538,500	\$417,011	\$955,511
	\$10,231,500	\$417,011	**\$9,814,489
* This amount includes \$359,000 administrative set aside from FY 2012 capitalization grant and funds claimed from banking in the amount of \$417,011. ** Amount available for use for financial agreement for projects during this IUP/Grant budget period. There are no repayments to be considered during FY 2012.			

A state must annually use at least 15% of all funds credited to the fund account to provide loan assistance to systems serving fewer than 10,000 persons (Section 1452(a)(2)), to the extent that there is sufficient number of eligible projects to fund. It is the Commonwealth's strategy to award loans to systems that eliminate or consolidate small systems serving a population of 10,000 or less. The following table presents a summary of the loan assistance provided by the Commonwealth to small systems since the inception of the program.

ASSISTANCE TO SMALL SYSTEMS WITH POPULATION < 10,000, BY LOAN AND FISCAL YEAR						
YEAR	PROJECT NAME	< 10,000	> 10,000	POPULATION	%	CUM %
97-98	Naguabo-Río Blanco		\$ 12,393,319	141,308		
	Mayaguez-Ponce de León		\$ 4,827,235	150,000		
	Guayama-Carite	\$ 2,880,963		5,575		
	Yabucoa-Guayabota	\$ 2,383,802		1,096		
	Guayama-Culebras	\$ 584,720		1,193		
	Utuado-Urbana		\$ 1,419,775	25,068		
	\$24,489,814	\$ 5,849,485	\$ 18,640,329		23.89%	23.89%
1999	Naguabo-Río Blanco		\$ 4,322,131	141,308		
	Río Grande-El Yunque		\$ 7,894,907	48,000		
	\$12,217,038	\$ -	\$ 12,217,038		0.00%	15.94%

ASSISTANCE TO SMALL SYSTEMS WITH POPULATION < 10,000, BY LOAN AND FISCAL YEAR						
YEAR	PROJECT NAME	< 10,000	> 10,000	POPULATION	%	CUM %
2000	Mayaguez-Ponce de León		\$ 4,851,945	150,000		
	Guayama-Carite	\$ 195,857		5,575		
	Yabucoa-Guayabota	\$ 914,198		1,096		
	Guayama-Culebras	\$ 215,280		1,193		
	Utua-Urbana		\$ 1,920,225	25,068		
	Río Grande-El Yunque		\$ 4,599,587	48,000		
	\$12,697,092	\$ 1,325,335	\$ 11,371,757		10.44%	14.52%
Transfer	Tanque Sergio Cuevas		\$ 11,055,165	771,169		
	\$11,055,165	\$ -	\$ 11,055,165		0.00%	11.87%
2001	Río Grande-El Yunque		\$ 11,900,870	48,000		
	Mayaguez-Ponce de Leon		\$ 848,662	150,000		
	\$12,749,532	\$ -	\$ 12,749,532		0.00%	9.80%
2002	Añasco-Nueva		\$ 12,245,082	28,348		
	\$ 12,245,082	\$ -	\$ 12,245,082		0.00%	8.40%
2003	Las Marias		\$ 12,171,438	20,000		
	\$12,171,438	\$ -	\$ 12,171,438		0.00%	7.35%
2004	Naguabo-Cubuy	\$ 6,247,832		3,541		
	Hatillo-Camuy		\$ 2,873,000	22,360		
	Naranjito-Anones	\$ 1,551,238		2,172		
	Morovis-Sana Muerto	\$ 1,954,000		3,285		
	\$12,626,070	\$ 9,753,070	\$ 2,873,000		77.25%	15.35%
2005	Yauco Urbano Nueva		\$ 13,262,520	16,000		
	\$13,262,520	\$ -	\$ 13,262,520		0.00%	13.71%
2006	Añasco-Nueva		\$ 8,498,531	28,348		
	Caguas Norte Filtration Plant		\$ 4,230,178	140,500		
	\$12,728,709	\$ -	\$12,728,709		0.00%	12.69%
2007	Río Grande-El Yunque		\$ 11,628,071	48,000		
	\$11,628,071	\$ -	\$ 11,628,071		0.00%	11.67%
2008	Yauco Urbano Nueva		\$ 5,254,345	48,000		
	Naguabo-Rio Blanco & Maizales (1A, 1B & II)	\$ 1,810,903		4,036		
	Naranjito - PF Anones	\$ 560,633		3,120		
	Hatillo - PF Camuy-Hatillo		\$ 1,819,316	39,200	25.11%	12.49%
	\$9,445,197	\$ 2,371,536	\$ 7,073,661			
2008	Hatillo - PF Camuy-Hatillo		\$ 2,276,000	39,200		
	Las Marias-Phase I - Overrun	\$ 1,006,036		7,871	30.71%	12.87%
	\$3,282,036	\$ 1,006,036	\$ 2,276,000			
2009	Caguas Norte Filtration Plant*		\$ 769,822	140,500		
	Guayama Urbano WTP		3,453,190	14,752		
	Arecibo WTP	1,888,800		3,700		
	Camuy		3,400,000	80,189		
	San Germán		2,790,000	19,500		
	Lares -Phase III	1,412,330		693		
	Lares -Phase II	1,607,071		565		
	Trujillo Alto-Sergio Cuevas WTP		1,410,202	771,169		
	Ciales -Las Delicias WTP	1,537,920		935		
	Caguas Sur Filtration Plant		1,020,000	34,000		
	\$19,289,335	\$ 6,446,221	\$17,253,392		33.42%	15.11%

ASSISTANCE TO SMALL SYSTEMS WITH POPULATION < 10,000, BY LOAN AND FISCAL YEAR						
YEAR	PROJECT NAME	< 10,000	> 10,000	POPULATION	%	CUM %
2010	Morovis Sur WTP		4,257,757	14,570		
	Morovis Urbano WTP	2,000,000		9,714		
	Cedro Arriba WTP-Naranjito	2,222,646		9,873		
	Añasco Water Intake		4,636,745	88,144		
	Hatillo Raw Water Intake		5,000,000	39,200		
	Rochas WTP-Moca	3,000,000		2,357		
	La Máquina WTP- Sabana Grande	2,000,000		3,207		
	Hatillo-Camuy - Phase II Overrun ♦		3,984,502	39,200		
	Lajas-San Germán, Trans Lines Overrun♦		4,008,664	55,050		
	\$23,117,148	\$9,222,646	\$13,894,502		39.90%	17.97%
2011	Valenciano WTP, Juncos	\$ --	\$19,645,275	22,137		
	Camuy-Hatillo-Quebradillas, Phase II	--	1,883,600	39,200		
	\$21,528,875	\$ --	\$21,528,875		0.00%	16.02%
2012	Valenciano WTP, Juncos	--	**\$ 7,814,489	22,137		
	Las Marías, Phase II-B	--	2,000,000	7,871		
	\$ 9,814,489	\$ --	\$ 9,814,489		0.00%	15.35%

Note: ARRA 2009 funds are not included.

* This project is funded in part with remaining funds from the FY 2006 allotment that were not used under the loan to the Añasco project. The grant and the loan were amended in order to assign the amount of \$4,230,178 under the FY 2009 allotment/list.

** This is the only estimated assistance available for the Valenciano project. The total estimated construction cost of this project is \$24,300,000.

*** This is the only estimated assistance available for the Las Marías Phase II-B project.

♦ Should the bids for the above projects result lower than the Estimated Assistance indicated, this project will be financed to the extent of the funds available. This project will also be financed if additional federal funds are available. Thus, this project is not considered in the calculation of the 15% credit for assistance to small systems.

There are small systems that will not have the capacity to enter into a loan, thus, the use of the 15% will be limited. Notwithstanding, it is the strategy of the Commonwealth to fund those projects that eliminate or consolidate small systems that do not have the capacity to enter into a loan. Meanwhile, DOH is taking steps to capacitate small systems in order to enable them to have technical, financial and managerial capacity to avail their ability to finance the construction of needed infrastructure that will warrant and provide compliance.

4. TYPES OF PROJECTS TO BE FUNDED

Projects eligible for DWSRF financing includes investments to upgrade or replace infrastructure, address exceeding federal or state health standards, prevent future violations of standards, and provide the public with safe drinking water. Examples of

such projects are:

- Green infrastructure projects to address water and energy efficiency improvements or other environmentally innovative activities.
- rehabilitation or development of new drinking water sources to replace contaminated supplies;
- installation or upgrading of facilities to improve the quality of drinking water in order to comply with primary or secondary standards and/or treatment/performance criteria;
- installation or upgrading of storage facilities, including finished water reservoirs to prevent microbiological contamination or to provide adequate delivery pressure;
- installation or replacement of transmission and distribution mains to prevent contamination caused by leaks or breaks;
- projects that promote the consolidation of water supply services, particularly in circumstances where generally the water supply is contaminated or the system is unable to maintain adequate compliance for financial or managerial reasons;
- the purchase of a portion of another system's capacity, if the purchase is part of a consolidation plan to bring the system(s) into compliance
- refinancing of any of the above listed project types which are publicly owned and were previously financed subsequent to July 1, 1993; and
- any eligible system or part of a system in conformance with the SDWA.

Concerning the Green infrastructure as indicated previously, the Appropriations Act states: "Provided further, That for fiscal year 2012, funds made available under this title

to each State for Drinking Water State Revolving Fund Capitalization grants may, at the discretion of each State, be used for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities.” The Commonwealth requested the Puerto Rico Aqueduct and Sewer Authority (PRASA)¹ applications for green projects. In addition DOH through public announcements has indicated the availability of funds for green infrastructure. Notwithstanding no applications and/or no eligible project applications for green infrastructure were received. To this effect the Commonwealth has determined that there are no sufficient eligible project applications. Thus, no percent of the funds will be appropriated herein from the Revolving Fund for projects to address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities, as the GPR is not mandatory for the DWSRF. Therefore, there will be no projects identified as such in the Project Priority List, notwithstanding that in the Attachment No. V *System Criteria and Ranking Methodology (Summary), H Green Portion (only for Green Projects)*, provisions are established to rank green projects, if there may emerge any such projects.

During this year, DOH’s intention is to establish the 2% set-aside for Technical assistance as well as the 4% corresponding to the Administrative set-aside of the Program. Thus, only reserve funds from these two set asides will be established. Nevertheless, in order to be able to cover all the necessary administrative expenses that will be incurred during the year to operate the Program, DOH will be claiming the amount of \$417,011 previously banked under the Administrative set aside. DOH reserves the authority to take from future capitalization grants funds not requested at

¹ Up to date the sole loanee of the DWSRF Program.

this time from the total annual Federal Capitalization Grant.

The anticipated outputs and outcomes of the projects included in this Intended Use Plan are:

Outputs	Outcomes
One (1) loan agreement	Improve compliance for systems receiving DWSRF assistance
Increase the cumulative disbursement rate to 68%*	Increase the speed at which projects are proceeding towards completion
Increase cumulative projects completion to 53%*	Improve compliance with SDWA by increasing number of projects initiating operations

* This percent includes new projects of the FY 2010 and 2011 funds.

** This per cent includes two (2) new grants, whose loans were recently executed. Disbursements are expected to start within the first six months after loan execution.

Following is the Priority list detailing all types of projects to be funded under this Intended Use Plan. Also the proposed fund disbursement schedule is presented:

o Rico Department of Health
 Water State Revolving Fund Program
 Federal Fiscal Year 2012

READINESS PRIORITY LIST
EH 2012 - DRAFT

Project Description	Population	Read. to go date	↓Estimated Assistance (\$)	GPR Amount Awarded	Subsidization Amount (\$)
eatment Plan	22,137	Feb-12	**\$ 7,814,489	0	\$ 0
nents to Las Marías Water on System	7,871	Jun-12	***2,000,000	0	1,795.000
TOTAL AMOUNT AVAILABLE FOR FINANCIAL AGREEMENT			\$ 9,814,489	0	\$1,795,000
<p> ct was initially funded. ie total estimated construction cost of this project is \$24,300,000. ing rate will be 2% and the amortization period 20 years. </p>					

Puerto Rico Department of Health
Drinking Water State Revolving Fund Program
Federal Fiscal Year 2012

2011 MULTI YEAR LIST MARCH 2012 - DRAFT

Name Public Water System	PWS I.D.	Priority Ranking	Priority Points*	Project Description	Population	Read. to go date	Estimated Assistance (\$)
Negros-Corozal	5537 (a)	1	140	Improvements to Negros WTP	24,016	July-14	2,104,390
Yauco-Río Prieto	4234 (c)	2	125	Improvements to Río Prieto WTP	5,800	Jun-12	19,584,832
Aibonito Urbano WTP	4545 (b)	3	125	Improvements to WTP	46,120	Jun-12	7,230,928
Juana Díaz	3924 (a)	4	120	Improvements to water system at San Carlos Comm., Collores Ward	2,522	Jun-12	3,099,866
Quebradillas-Guajataca	3772 (a)	6	95	Improvements to Guajataca WTP	11,679	Sept-15	5,221,410
Caguas Sur WTP	5066	7	30	Improvements to Beatriz WTP	29,516	Jan. 14	39,821,763
Caguas Sur - Beatriz Ward	5066	8	30	Construction of new water supply system	29,516	Jan. 14	33,508,556
Aguadilla-Río Culebrinas	3293 (a)	9	15	Improvements to Río Culebrinas water intake	67,187	Jan-14	5,700,000
Rincón-Cidra	4695 (a)	10	10	Improvements to water intake pump station at Rincón Ward	37,262	July-14	4,263,252
TOTAL							\$120,534,996

* Priority and ranking points as per prior fiscal years Priority Lists, where project was initially **evaluated and/or** funded.

Valenciano WTP – Juncos
PWS ID 5166 (a)

MENT SCHEDULE FOF FEDERAL AND STATE FUNDS

inance Rate	Repay Date	Type of Project (Step)	Design Start	Constr. Start	Constr. Complete
2%	Nov-15	3	March-12	Apr-12	Nov-14
--	--	--	--	--	--

Valenciano WTP – Juncos PW SID 5166 (a) Loan Portion							
	FY 2014				FY 2015		Total
	1 QTR	2 QTR	3 QTR	4 QTR	1 QTR	2 QTR	
3	\$ 567,586.13	\$ 567,586.13	\$ 567,586.13	\$ 567,586.13	\$ 567,586.13	\$ 510,766.56	\$ 6,385,274.73
5	\$ 127,042.65	\$ 127,042.65	\$ 127,042.65	\$ 127,042.65	\$ 127,042.65	\$ 114,324.74	\$ 1,429,214.27
3	\$ 694,628.78	\$ 694,628.78	\$ 694,628.78	\$ 694,628.78	\$ 694,628.78	\$ 625,091.30	\$ 7,814,489.00

Las Marías, Phase IIB
PWS ID 3363 (c)

LOAN TERMS AND DISBURSEMENT SCHEDULE FOF FEDERAL AND STATE FUNDS

Source	Cost	Loan Term (years)	Finance Rate	Repay Date	Type of Project (Step)	Design Start	Constr. Start	Constr. Complete
Loan	\$ 205,000.00	20	2%	Dec- 15	3	July-12	Dec- 12	Dec- 14
Subsidized	\$ 1,795,000.00	--	--	--	--	--	--	--
TOTAL	\$ 2,000,000							

Las Marías, Phase IIB PW SID 3363 (c) Loan Portion										
FY 2013		FY 2014				FY 2015			Total	
3 QTR	4 QTR	1 QTR	2 QTR	3 QTR	4 QTR	1 QTR	2 QTR	3 QTR		
\$ 167,506.96	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 167,506.96	
\$ 37,493.04	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 37,493.04	
\$ 205,000.00	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 205,000.00	

Las Marías, Phase IIB PW SID 3363 (c) Subsidized Portion								
2013	FY 2014				FY 2015			Total
1 QTR	2 QTR	3 QTR	4 QTR	1 QTR	2 QTR	3 QTR		
\$ 195,561.93	\$ 195,561.93	\$ 195,561.93	\$ 195,561.93	\$ 195,561.93	\$ 195,561.93	\$ 117,330.87	\$ 1,466,707.31	
\$ 43,772.57	\$ 43,772.57	\$ 43,772.57	\$ 43,772.57	\$ 43,772.57	\$ 43,772.57	\$ 26,262.13	\$ 328,292.69	
\$ 239,334.50	\$ 239,334.50	\$ 239,334.50	\$ 239,334.50	\$ 239,334.50	\$ 239,334.50	\$ 143,593.00	\$ 1,795,000.00	

5. FINANCIAL PLANNING PROCESS

Projects can be submitted for listing at any time. A new IUP will be issued at least once a year and may be amended during the period that the IUP is in effect, providing that sufficient funds are available. Projects submitted for financing will be screened for eligibility, ranked, scored and listed. All eligible projects for which pre-application forms have been submitted and reviewed will be included on the Priority List. Projects ready for financing will be listed on the project Readiness List. Direct loans will be originated throughout the year.

Concerning the grant payments, these have been schedule as follows: first payment (second quarter) for January 2013 for the set-asides and second payment (fourth quarter) for July 2013 for projects.

Section 1452 (e) and (g)(2) provides for the establishment of program administrative fees which may be assess on a recipient of a loan and these must be deposited into the Fund or into an account outside the Fund. DOH has determined to establish this fee. DOH will be requesting to the Government Development Bank to establish it. In addition, DOH will be requesting that such fee shall be deposited into an account outside the Fund for its use only for the purposes for which the capitalization grant is awarded under Section 1452 (e) of the SDWA or for state match. Thus, in addition to the payments required on the Financial Agreement, PRASA shall pay an administration fee payable at the closing date of the Agreement. For this current fiscal year FY funds 2012 this fee is one-half (0.5%) percent of the Loan amount for a total of \$44,875.00 which will be deposited by the PRIFA/GDB outside the Fund in a separate Interest Bearing Account. It is the intention of this Department to use these funds together with the interests earned, within others purposes, for state match.

6. TYPES OF ASSISTANCE AND FINANCIAL TERMS

DOH certifies that only the types of assistance authorized under the SDWA as amended, will be awarded from the DWSRF. The terms and conditions of the loans to be awarded are as authorized by the SDWA. Capitalization Grants will be used to provide the following types of financial assistance:

6.1 Direct Loans

Based on an economic and financial analysis conducted on behalf of DOH by Puerto Rico Infrastructure Financing Authority (PRIFA), loan agreements will be executed with PRASA or any other qualified borrower at a negotiated interest rate. Up to date, the loan interest rate has been 2% and the financing term has been 20 years. These may vary as a result of a financial analysis to be undertaken. In compliance with the law, DOH expects to execute the binding commitment (Financial Agreement³) on or before the deadline established by the law, which is one year after the grant award.

6.2 Refinancing

In accordance with Section 1452 (f)(2) of the SDWA, local debt obligations may be purchased or refinanced at or below market rates, where the initial debt was incurred and construction initiated after July 1, 1993.

6.3 Hardship Loans/Affordability Criteria for Disadvantaged Systems

The Commonwealth may determine if hardship loans will be made available to borrowers and the rate at which (below the regular reduced rate) they will be executed. Affordability criteria (refer to section 8) will help to determine the hardship loan rate, which may be as low as zero percent.

³ Reference is made to a Financial Agreement when the agreement includes a loan portion and a subsidized portion.

Therefore, a small disadvantaged community loan may be established in conformity with the requirements and applicable federal regulations. Terms governing principal amortization may be the same as those applicable to direct loans, where the interest rate may be reduced. Any interest payable on hardship loans will be set or determined by the Puerto Rico Infrastructure Financing Authority (PRIFA) and may be between two-thirds of the market rate, as determined by the most recent DWSRF financing, and zero percent (0%). The actual rate may be determined based on the affordability criteria. For certain borrowers that qualify for a zero percent hardship loan, there may be a service charge. This will be determined by the Puerto Rico Infrastructure Financing Authority (PRIFA) and DOH.

6.4 Additional Subsidization

The Procedures require States to provide not less than 30 percent in additional subsidies, to recipients in the form of forgiveness of principal, negative interest loans, or grants (or any combination of these) to any "eligible recipients" of DWSRF assistance.

In targeting additional subsidies, Puerto Rico will provide not less than 20% (\$1,795,000) but not more than 30 percent (\$2,638,500) of the FY 2012 capitalization grant to provide additional subsidization in the form of grant, as established in the EPA Memorandum Procedures for Implementing Certain Provisions of EPA's Fiscal Year 2012 Appropriations Affecting the Clean Water and Drinking Water State Revolving Fund Programs. For this fiscal year DOH will not exceed 30%. The recipient of the grant must identify projects within at least one of the following categories in order to receive the additional subsidies:

- a) projects that will eliminate or consolidate small system,
- b) projects that support sustainable systems and help build or maintain the technical, financial and managerial capacity of the recipient,
- c) systems related to communities or serving directly a community that could not otherwise afford the DWSRF loan including Disadvantaged communities as defined by the Commonwealth.

If the recipient has projects that could be identified under one or more of the above mentioned categories, for each additional remaining category the percent will increase by 5%. The subsidy will be awarded to eligible recipients as follows:

- to project(s) by priority order and the qualifying category and until the subsidized amount is completely used.

In the case that there is only one recipient the subsidized amount could be awarded in any of the following manners and until the subsidized amount is completely used.

- To project(s) by priority order and the qualifying category
- directly to the project(s) identified within the qualifying categories
- the project(s) first received and ready to go
- The most expensive project (s)

In fact for this fiscal year Puerto Rico will be awarding or providing \$1,795,000 or 20% of its Capitalization Grant as additional subsidy to the Las Marias - Phase II-B project, which will be in the form of grant and they will be subject to compliance with the regulations at 40CFR Part 31.

6.5 Leveraging

The Government of Puerto Rico may consider leveraging in order to increase the amount of funds available to finance infrastructure projects. If leveraging is undertaken, it will be indicated in the IUP and the applicable grant application and will be structured in accordance with the requirement of the Act and the DWSRF final guidelines.

6.6 Repayments

As of March 2012 there are no monies available from loan repayments including accrued interest in the fund for providing assistance in addition to the annual capitalization grant.

7. SET-ASIDE ACTIVITIES

Section 1452 of the SDWA authorizes states to use a portion (set-asides) of the federal Capitalization Grant to support various drinking water programs. Section 1452 allows as much as 31% of a State's Federal Capitalization Grant to be used for administrative assistance, technical assistance, public water supply supervision and special activities. As stated previously, only two set-asides will be established. The Commonwealth of Puerto Rico proposes to use \$359,000 or 4.0% of the \$8,795,000 FFY 2012 Capitalization Grant for the administrative set-aside purpose. In addition, the Commonwealth plans to use \$179,500 or 2.0% of the total annual Federal Capitalization Grant for technical assistance. A table of specific set-aside allocation is provided at the end of this section. The Commonwealth will claim from previous capitalization awards previously banked funds in the amount of \$417,011 to further the operation of the Program. Thus, a total of \$955,511⁴ between set asides and banked

⁴ The Budget Detail references this information.

funds claimed is necessary to operate the Program. Notwithstanding, we reserve the authority to take from future capitalization grant funds not requested at this time. Also, the Commonwealth intends to maximize the use of Capitalization Grant monies for water supply projects as much as possible. Therefore, only those funds considered essential for DWSRF and Water Supply Supervision program support have been allocated to set-aside activities. Unused set-aside funds can be re-budgeted to fund eligible activities under set-asides. Nevertheless, any unused set-aside monies can also be transferred to the project fund after receiving an approved amendment to the Capitalization Grant. It is important to note that DOH will continue undertaking a series of activities and project that were previously funded with monies set apart under the set-asides that have been carried over from previous capitalization grants and which use is based, within others, on priorities established in the Technical Assistance Support (TAS) (See Attachment I). The Work Plan provides all the activities that DOH will be undertaking in order to expedite the use of funds not only from the current fiscal year but any other unliquidated balances. Thus it must be pointed out that the Work Plan contains and details certain activities which are on-going and will be undertaken annually as part of the follow-up to previously funded activities. Other activities, such as pilot projects, have a specific time frame for their completion. DOH will continue the oversight to ongoing contracts and expects to complete during this fiscal year one contract. The intended use of funds and expected accomplishments for each set-aside are described below. In summary, the submitted annual Work Plan includes additional information on estimated projected time frames for the execution of the activities. Also, it is important to point out that up to date DOH has been able to complete the activities detailed on previous years Work Plans. Nonetheless, if there are activities that require

more than one year for its completion, these are detailed on the current fiscal year Work Plan. Moreover, the Performance Status Report submitted annually accounts for those activities completed or achieved and presents reasons for delays, if any, in their execution.

7.1 Administrative Assistance

The SDWA authorizes states to take up to 4% of the total annual Federal Capitalization Grant (as provided in Section 130 of the SDWA amendments of 1996) to support the cost of administering the DWSRF program. The Commonwealth plans to use \$359,000 or 4.0% of the total annual Federal Capitalization Grant for administrative activities. In addition, the Commonwealth will use banked funds in the amount of \$417,011 to further the operation of the Program. Thus, a total of \$955,511 between set asides and previously banked funds is necessary to operate the Program. Administrative tasks are undertaken, mainly on an annual basis, and include, but are not limited to:

- implementing the Operating Agreement between DOH and the United States Environmental Protection Agency (EPA);
- developing and finalizing a Capitalization Grant application package to secure federal funds;
- performing project technical reviews; ranking project proposals in priority order;
- preparing an IUP which identifies available funding resources and expenditures and establishes a readiness fundable priority list (current year) and multi-year project priority list;

- implementing a State Environmental Review Process (SERP) as required; reviewing and approving engineering reports, construction plans and specifications; conducting project inspections;
- evaluating and determining project affordability (hardship); conducting public participation efforts and hearings;
- tracking systems; directing the investment of DWSRF funds; preparing project financing and loan agreements (including cost summaries and project financing schedules);
- preparing necessary financial documents; originating loans; processing disbursement request and conducting associated document review; collecting and managing loan repayments; and
- establishing and collecting loan fees; insuring that program and fiscal audits are conducted; preparing necessary cash draw requests and preparing technical and financial reports to meet federal and state mandates.
- preparing reports for the compliance with program requirements and grant conditions.

7.2 Technical Assistance

Section 1452 (g)(2)(D) of the SDWA authorizes states to take up to 2% of the total annual Capitalization Grant to provide technical assistance to small water systems (those with population of 10,000 or less). This technical assistance may include assistance to potential loan recipients complying with national and state drinking water regulations. The Commonwealth plans to use \$179,500 or 2.0% of the total annual Federal Capitalization Grant for technical

assistance in order to continue enhancing the existing Non-PRASA section and continue undertaking Comprehensive Performance Evaluation(CPE)⁶. It is essential to continue expanding the technical assistance provided and explore new mechanisms and programs to address the needs of small systems. With the collaboration of public and private entities these activities may be undertaken to provide direct assistance to selected or specific communities.

As stated, the Technical Assistance Support (TAS) established by DOH as part of Puerto Rico's Drinking Water Program will provide, in an organized manner, the assistance that drinking water systems need in concert with other Commonwealth assistance initiatives. The purpose of the TAS is to use the DWSRF and set-asides limited resources effectively and efficiently. Though the TAS has the following priorities:

- Capacity Development Program,
- Area-Wide Optimization Program,
- Circuit Rider Program.

During this year, DOH will focus on Capacity Development and Circuit Rider in an effort to cope and to certain extent harmonize DOH's TAS with the Sustainability Policy (the Policy). DOH understands that it is necessary to continue the implementation of the TAS and in this process evaluate/revise it or undertake minor changes that will take into consideration the Policy to the extent of the availability of funds.

The validation of a small system CPE was completed few years ago. On a yearly basis new systems are assisted by implementing the CPE while follow up

⁶ DOH has develop an adapted CPE that has been validated and is used for evaluating small systems.

is provided to systems where the CPE was completed.

In regard to the Circuit Riders Program, during this year the programming of the implementation in other systems is expected in order to continue expanding it. DOH completed the preparation of a request for proposal and expects to execute a new contract or amend an existing one if necessary where two concepts Capacity and Circuit Rider are mingled in order to provide technical assistance.

In addition, the pilot project for introducing and providing security and emergency response concepts into small systems is expected to be completed by December 2012. It is the Commonwealth's intention to increase the number of available sources or providers of technical assistance to small systems in order to outreach a greater number of systems, increase the number of systems that are in the process of attaining compliance, increase the number of systems/communities that are benefited through the targeting of subsidies; improve systems compliance and operation, increase knowledge of the need to comply with the SDWA, improve and maintain the quality of water served, and thus, ultimately, protect the public health.

These priorities have several activities associated which are described in detail in the Work Plan. As stated previously, there are certain activities which are on-going and will be undertaken annually as part of the follow-up to previously funded activities. Other activities have a specific time frame for their completion, while those associated to a contract or a pilot project may range in time to up to two (2) years.

7.3 Small Water Systems (Non-PRASA)

DOH has an existing small water systems program (Non-PRASA). The

DOH Non-PRASA program provides technical assistance and guidance to communities by considering project alternatives, determining project priorities, and advising communities on selecting the simplest project, using volunteers and avoiding duplication of services.

The activities to be undertaken include:

- acquiring, training and orienting new program staff;
- holding community meetings to explain the Non-PRASA program and its advantages;
- upgrading the record keeping system to facilitate periodic status reports;
- train and certify if necessary existing staff as certified operators
- assignment of existing staff to provide training and orientation to systems owners or operators; and
- assist systems' owners in order to facilitate the certification of the operator.

This very successful Program needs to be expanded to service more systems and to provide uniform coverage within the Commonwealth in their process of attaining compliance. For this reason, other private or Commonwealth agencies may be used to provide technical assistance for aspects of management and coordination of small community drinking water projects, in accordance with the existing Non-PRASA Program.

It is necessary to continue expanding and outreaching the number of communities that are being evaluated and receiving technical assistance for

financial and managerial aspects of capacity development, in order to improve the quality of the water served by the Non-PRASA systems and, thus, attain compliance.

As it has been stated, since FFY 1998, the goal of the technical assistance initiative is to provide assistance to small public water systems to enable such systems to achieve and maintain compliance with applicable national and state drinking water regulations. The Commonwealth has used this set-aside to provide technical assistance, among other things, by performing Comprehensive Performance Evaluations (CPE)⁷ and by implementing the Small Systems Strategy, in order to provide the drinking water systems with different assistance mechanism to bring into compliance. This assistance will be directed towards addressing the technical, financial and managerial issues necessary to attain compliance. DOH will continue using it as a tool in the Area Wide Optimization Program. The optimization of systems is also considered in their evaluation. Moreover, DOH will expand the outreach to other systems and will continue implementing the use of the small systems CPE methodology previously validated. Technical assistance in the revision of CPEs will also be undertaken during this year. In addition, it is the intention of DOH to enter into partnership with a private entity in order to enhance the CPE by performing Sanitary Surveys.

During this year will give oversight to 48 systems that will be subject to sanitary survey and will be evaluated taking into account within others the optimization of the system and will provide follow-up and guidance in the

⁷ Including the adapted CPE for small systems

implementation of their compliance action plans in order to provide the tools for optimizing them and re-enforce the maintenance and/or attainment of capacity.

Concerning the PRASA Systems in terms of the CPE's, through a bilateral agreement between DOH and PRASA, these were to be conducted by in-house (state) staff or approved third party experts who have received certification by PRDOH. During FFY 2012, DOH, as necessary, will continue evaluating the profiles of experts and will certify them for undertaking CPE's, in accordance to the AO/bilateral agreement.

The primary goal of the CPE is to review and evaluate the capabilities of an existing treatment facility to determine if it is meeting current standards and performance goals. In addition, the CPEs will assess whether the optimization of facilities will assure compliance with current and future standards and regulations.

Training of field staff responsible for follow-up, making equipment available when needed, and holding at least one workshop per year on troubleshooting techniques will be necessary.

7.4 State Program Management

The SDWA authorizes states to take up to 10% of the total annual Capitalization Grant to support State Program Management activities, including implementation of an Operator Certification Program and a Capacity Development Strategy. DOH reserves the authority to take from future capitalization grants funds not requested at this time from the FY 2012 capitalization grant in the amount of \$897,500 or ten per cent (10%). States are required to match this set-aside on a one-to-one basis above and beyond the

20% match required for all capitalization funds. This amount can be matched with the credit of match and overmatch provided by the Public Water Supply Supervision Program (beyond the required 25% PWSS match).

7.4.1 Operator Certification Program

The Commonwealth of Puerto Rico, through DOH and the Puerto Rico Department of State, State Drinking Water Treatment Plant Operator Certification Board (the Board) established the Operator Certification Program for Drinking Water Systems, in accordance with the SDWA, which was approved by EPA on September 2002. Puerto Rico has been implementing this Program since its approval. The federal law also authorizes \$30 million nationally, annually, to support reimbursement of expenses for the training of non-salaried operators at water systems with populations of 3,300 or less people. EPA approved the reimbursement grant on September 30, 2003.

DOH will continue promoting awareness of upcoming regulations in order to ensure adequate operation, reduce system's non-compliance, and expand the training resources available in an effort to improve pass/fail rates of operators taking licensing tests, thus, fostering systems' compliance by implementing the OCP. Meetings with the Existing Board on Operators Certification will continue. Orientation, training and certification of new technical staff concerning operation certification requirements and compliance with the SDWA will provide continuous support/assistance to systems subject to the training plan.

DOH goals for the Operator Certification Program are: to review

the adequacy of existing training programs as to the geographic distribution and quality of the training provided; to address the training needs of the operators who will need to be certified in the next few years by outreaching systems and making them available the trainings and compliance requirements and to implement the reimbursement grant to assist systems operators in their training certification process, in order to attain compliance and train and certify staff as operators which in turn that can continue providing oversight for future operators' compliance with the license requirements.

Currently, DOH is administering a contract for the implementation of the reimbursement grant and has amended the operator reimbursement grant and the contract in order to include new systems' personnel that will be trained and will be under a direct supervision of a certified operator in order to assist them in the compliance of the requirements needed to obtain the operator certification license.

By means of the Operator Certification initiative, DOH expects to continue advising the Non-PRASA systems and the transient and untreated community systems of the future need for certified operators and the qualification they shall meet. In addition, oversight of the Operator Certification Reimbursement Contract will continue with the evaluation of Progress Reports on activities undertaken for the implementation of the training plan.

7.4.2 Capacity Development Program

Under the Federal Capacity Development Strategy, as outlined in

Section 1420 of the SDWA, the State must have the legal authority to assure that all new water systems demonstrate adequate capacity and have a capacity development program in place by October 1, 1999. The Commonwealth of Puerto Rico developed a capacity development assurance plan that was approved by EPA on September 1999 where procedures for undertaking the capacity assessment of new drinking water systems were established. On August 4, 2000, DOH submitted to EPA, the Capacity Development Strategy, which was approved by EPA on September 29, 2000. Up-to-date, DOH has complied with all required reports and documentation related to the Capacity Development.

The goals of the Capacity Development Strategy are to discourage the formation of new, small, non-viable public water systems, and to assist and encourage the consolidation, collaboration and regionalization of existing non-viable systems. Attachment II (Capacity Development Program) summarizes the Capacity Development elements considered when assessing Capacity.

In order to continue meeting federal capacity development requirements, the DOH, has established certain strategies and is undertaking activities such as, the evaluation of new public water systems with the capacity development checklist developed by DOH (See Attachment III - Checklist Capacity Development program New Drinking Water System Capacity Assurance Plan), and the economic assessment of viability of proposed systems. Also, DOH continues the search and identification of those agencies and institutions that would have an interest

in the development and implementation of a capacity development strategy.

Thus, together with these activities, DOH expects to continue enforcing the Legal Authority provided by the existing statutes. Community water systems and non-transient, non-community water systems with a History of Significant Non-compliance (HSNC) are evaluated. The states have to implement in the Capacity Development and the DWSRF programs actions to reflect the new Enforcement Response Policy (ERP) and the Enforcement Targeting Tool (ETT). DOH is currently undertaking the transition from the evaluation of systems through the traditional HSNC to ETT. The terms "historical significant noncompliance" and "significant noncompliance" are to be interpreted for purposes of the Capacity Development and DWSRF program implementation as systems with ETT scores of 11 or greater. This policy change is effective beginning in Fiscal Year 2013. Under this new approach, the states will not be required to submit a list of HSNCs every three years. It is the intention that the list generated as part of the ETT can be used as one of the ways to identify systems that may lack technical, managerial and financial capacity (TMF) and prioritize the assistance that can be provided. Thus instead of reporting SNCs, states can indicate, which of those new community and non-transient non-community water systems have at any point during the first three years of operation, had unaddressed violations that incurred an ETT score greater than or equal to 11. Under the ERP, these systems are

considered a priority system by EPA. This can provide a tool to determine steps to help the systems return to compliance. DOH has complied with the quarterly reporting with the ETT and it is the intention to continue doing so, as well as to comply with the inclusion of said information in the Capacity Development Report.

As stated previously, DOH will continue providing assistance with the intention of conducting systems towards compliance with the Capacity Development Program, and increase the number of systems in compliance with the SDWA. This will be undertaken, through several approaches and contract undertakings as well as through the regular compliance assistance.

7.5 Special Activities Local Assistance And Other State Program Up to 15% No More Than 10% Activity

Section 1452(k) of the SDWA authorizes states to take up to 15% of the annual Capitalization Grant to assist in the development and implementation of local drinking water protection initiatives by providing assistance in the form of loans for land acquisition and source water petitions projects. No more than 10% of the Capitalization Grant can be allotted to any one of these special activities. The Commonwealth is not proposing to take or use any of the allotted set-aside funds from the FFY 2012 DWSRF Capitalization Grant for the following programs.

7.5.1 Land Acquisition

Funds in the DWSRF can be used to purchase land integral to the construction of facilities, but not for other purposes such as watershed

protection. A separate 10% set-aside could be used to establish a separate low-interest loan fund for land acquisition, particularly for watershed protection. The Commonwealth is not proposing to create such a loan fund at this time. There may be other existing programs that may be used to purchase sensitive watershed lands.

7.5.2 Capacity Strategy

The Commonwealth has used a portion of the allotted State Program Management set-aside to develop a Commonwealth Capacity Development Strategy. DOH, based on information available from other Commonwealth agencies, developed the necessary strategies of capacity development in the Commonwealth, including, without limitation, legislative, regulatory and program changes to prevent the creation of non-viable public water supplies and address existing non-viable public water supplies in the Commonwealth. A pilot project for developing capacity and for the elimination of limiting factors was completed. DOH re-budgeted remaining funds under the Wellhead Protection set-aside in order to use them under Section 1420(c) of the SDWA to establish a Capacity Development Strategy set-aside to provide technical and financial assistance support to these systems in order to avoid a back slash in their compliance process.

7.5.3 Source Water Petitions

As part of the State's Source Water Assessment and Delineation Program, the Commonwealth will assess variety of options for improving source water protection throughout the Commonwealth. The source

water petition program outline in the SDWA is one such option. It would be premature to develop a loan program to fund source water petition partnerships before this assessment is completed and released to the public.

The following table summarizes the set-aside established.

SET-ASIDES STATE REVOLVING FUND				
	SDWA	FFY 2012 MAXIMUM ALLOCATION	COMMONWEALTH H Puerto Rico	FFY 2012 *
Set-Asides				
Administration	4%	\$359,000	4%	\$359,000
DOH & PRIFA				
Technical Assistance	2%	179,500	2%	179,500
Management Programs ** (Requires Dollar to Dollar Match)	10%	897,500	0%	0
Capacity Development				
Operator Certification				
Special Activity Set-Asides (No banking allowed. No more than 10% for any individual component under this set-aside)	15%	1,346,250	0%	0
Land Acquisition	(10%)	(897,500)	(0%)	0
Capacity Strategy	(10%)	(897,500)	(0%)	0
SW Petition Programs	(10%)	(897,500)	(0%)	0
Total Set Asides	31%	\$2,782,250	6%	***\$538,500

* Based on an actual appropriation of \$8,975,000.

** DOH reserves the right to take from future capitalization grants \$897,500 (or 10% from FY 2012 Capitalization Grant) to be used for activities under this set-aside.

*** In addition to this amount, \$417,011 will be claimed from banking for a total of \$955,511 to be used for the operation of the Program.

8.0 DISADVANTAGED COMMUNITY PROGRAM

8.1 Definition of Disadvantaged Community

As defined by 1452(d)(3) of the SDWA, a disadvantaged community is one in which the service area of a public water system meets affordability criteria established after public review and comment by the State in which the public water system is located. In the Commonwealth, drinking water projects will be reviewed to determine funding eligibility and scored based on an established priority ranking system. Communities whose water projects are ranked high enough will be evaluated for hardship based upon a comparison of projected and programmed service charges (total debt service plus operation and maintenance costs) for a typical household expressed as percentage of Median Family Income (MFI) for the service area. The DWSRF may provide additional financial assistance to water systems serving communities experiencing economic hardship. Additional financial assistance will be accomplished by first reducing the interest rate as necessary to lower the projected service charge to the Proposed Service Charge (PSC). Other financial mechanisms such as principal subsidy or 30 year loan terms may be available to provide increased financial benefits. Although up to 30% of the Capitalization Grant can be used for loan subsidies, the Commonwealth has not use this mechanism, in order to preserve as much DWSRF capitalization as possible to meet the strong demand for financial assistance throughout the Commonwealth. Projects, which qualify for financial hardship assistance, will be provided with written confirmation letters and in future IUP periods placed on the Multi-Year priority list as Hardship Loans. Written hardship confirmation will be limited to projects that have a total

numerical score greater than (or equal to) the project with the lowest score (excluding bonus points) eligible to be funded from the current multi year list. Hardship projects with this score or higher will be selected from the Multi-Year List. Written qualification for financial hardship assistance will remain valid for two consecutive annual federal funding cycles. If a project has not been selected for funding during this period, it will be removed from the fundable portion or readiness list identified as Hardship (and re-listed on the Multi-Year List) unless is re-qualified as a Hardship Loan project.

Confirmation that a project qualifies for hardship assistance will help facilitate funding coordination with other agencies such as Rural Development, and Housing and Urban Development (HUD). Coordination of joint funding of projects will be done on a project by project-basis.

8.2 Affordability (Hardship/Disadvantage System) Criteria

The purpose of the affordability criteria is to determine which public water systems are eligible for financial assistance beyond the ordinary benefits available through the DWSRF. The additional benefits will assist economically disadvantaged water systems in the construction of eligible drinking water projects.

8.2.1 Affordability Criteria

This Criterion is design to assist systems most is needed on a household basis. The points awarded for this Category are documented by the latest census information. For those systems, identified as disadvantaged, priority points will be awarded based on the Media Family Income Levels (MFIL) (See Attachment IV).

8.2.2 *Hardship Financial Assistance Criteria*

The determination will be made as follows:

- Maximum population to be served will be 10,000. Projects may not be segmented in order to qualify for hardship assistance.
- Refinancing is eligible through the regular subsidized DWSRF program if qualified or eligible as required and stated in the DWSRF. However, hardship financial assistance is only available for new drinking water projects for which the notice for construction to proceed was given on or after July 1, 1993.
- The applicant for a DWSRF hardship loan must demonstrate that it can repay its debt obligation, has a satisfactory O&M procedure and can comply with DOH/DWSRF Capacity Development Program.
- Projects that are determined eligible for hardship assistance will receive a written confirmation of eligibility.
- Confirmation of funding availability will be valid for two consecutive annual federal funding cycles provided that the projected service charge does not change significantly.
- Confirmation of funding availability may be withdrawn if: the applicant fails to demonstrate satisfactory progress towards project implementation; the information on which the determination was made changes prior to loan closing; or

the applicant fails to demonstrate that it can repay the loan.

8.2.3 Projects Likely to Receive Additional Assistance Payments (Hardship List)

Systems with projects eligible for funding in this IUP will be required to submit the financial information listed above, as well as any additional information requested by DOH. Hardship determinations will be made as project information becomes available.

8.2.4 Additional Subsidies

Notwithstanding, the regular subsidies provided by the law during the last few years the Procedures for Implementing Certain Provisions of EPA's Fiscal Years Appropriations Affecting the Clean Water and Drinking Water State Revolving Fund Programs have required the establishment of certain percents for subsidies and DOH has complied with the requirement by establishing mechanisms for targeting and awarding the funds and the percent.

EPA has stated that under the DWSRF "the first priority for States is protection of water quality (in the CWSRF) and public health (in the DWSRF) based on the Clean Water Act and Safe Drinking Water Act, respectively". Notwithstanding, the Appropriations Act provides for the use of the additional subsidies provision as opportunity for the States "to use the subsidy assistance to further additional objectives that supplement but do not replace the statutory objectives" above mentioned. Moreover "EPA's Clean Water and Safe Drinking Water Infrastructure Sustainability Policy (October, 2010) and relevant provisions of the HUD-DOT-EPA

Partnership Agreement (June, 2009) provide the basis of EPA's policy advice to the States on the use of the additional subsidy." Base on the above, "the Sustainability Policy encourages States to target the additional subsidies to communities that could otherwise not afford an SRF loan. These communities may include, for example, disadvantaged communities or environmental justice communities. The Policy also encourages States to use their subsidy authority to fund the development of plans using the Planning for Sustainability Handbook."

In targeting additional subsidies, Puerto Rico will provide during this year not less than 20% (\$1,795,000) but not more than 30 percent (\$2,638,500) of the FY 2012 capitalization grant to provide additional subsidization in the form of grant, as established in the EPA Memorandum for this fiscal year DOH will not exceed 30%.

The recipient of the grant must identify projects within at least one of the following categories in order to receive the additional subsidies:

- a) projects that will eliminate or consolidate small system,
- b) projects that support sustainable systems and help build or maintain the technical, financial and managerial capacity of the recipient,
- c) systems related to communities or serving directly a community that could not otherwise afford the DWSRF loan including disadvantaged communities as defined by the Commonwealth.

If the recipient has projects that could be identified under one or more of the above mentioned categories, for each additional remaining category the percent will increase by 5%. The subsidy will be awarded to

eligible recipients as follows:

- to project(s) by priority order and the qualifying category and until the subsidized amount is completely used.

In the case that there is only one recipient the subsidized amount could be awarded in any of the following manners and until the subsidized amount is completely used.

- to project(s) by priority order and the qualifying category,
- directly to the project(s) identified within the qualifying categories,
- the project(s) first received and ready to go,
- the most expensive project s).

9. PROJECT PRIORITY LIST

9.1 Project Selection Process

Federal law requires the Commonwealth to develop a Project Priority Ranking System. The priority ranking system establishes a list of eligible projects to be funded in a manner consistent with the SDWA such that compliance is given the highest priority. The DOH proposed that Priority will be given to water systems in non-compliance with the surface water treatment requirements, and those incurring acute, primary or action level violations as defined in the SDWA. Addressing these problems will protect the public health of the water users and will bring water systems into compliance with the SDWA.

The next priority has been given to systems that address the most serious risks to public health therefore the highest priority will be given to acute public health risks, particularly those related to microbiological organism. Situations that

pose chronic and longer-term risks to consumers, such as organic chemical contamination, are also considered.

The scoring criteria, also considers issues related to infrastructure upgrading or replacement. The project ranking system also considers, as mandated by the SDWA, special allocations and restrictions on the use of DWSRF monies for disadvantaged and small systems. A detailed-description of the Project Priority Ranking Systems is included as Attachment V (Systems Criteria and Ranking Methodology (Summary) to this IUP. A checklist as to the information to be provided by the proponent is included as Attachment VI (Check List for Priority Ranking/Project Fact Sheet - pages 22 to 26).

9.2 Description and Use of Project List

Projects must be included in the IUP to receive DWSRF financing. This IUP includes the following prioritized lists of eligible projects being considered for financing from the DWSRF.

- The Project Readiness List or Fundable List includes projects which have completed construction or will submit plans and specifications for review and approval, and are expected to be ready for long-term financing during the effective period of this IUP. DOH will review the projected readiness date and the project proposal for all eligible projects and put together the fundable and planning portions of the list.
- The Project Multi-Year List will also include the project readiness list which includes all those projects expected to qualify for long provisions are made in the Project Priority Ranking System to

bypass project which may not progress as expected. The Multi-Year List includes projects that may be ready during the current IUP period and, in the case where additional funds are available or a project on the fundable or readiness portion is not ready to proceed, these projects may substitute the ones not ready upon a formal request of the proponent. Both Lists may include, projects for small systems serving less than 10,000 people.

9.3 Hardship List

This IUP does not include a Hardship List, as hardship determinations will not be completed until after submittal of additional project information to evaluate qualifications for hardship status.

9.4 State Environmental Review Process/Determination of Equivalency Projects

To be consistent with federal guidelines, the State Environmental Review Process (SERP) ⁸ applies to all projects receiving financial assistance from the DWSRF. The SERP incorporates environmental review requirements of the National Environmental Policy Act (NEPA) and its implementing regulations, and the Puerto Rico Environmental Quality Board Act (Act No. 416 of September 22, 2004, known as the Environmental Public Policy Act derogated Law No. 9 of June 18, 1970, as amended). The DWSRF loan applicant must comply with the

⁸ Delegated by Law of the Commonwealth, the Office of Permits Management (OGPe) will be undertaking certain activities that were undertaken by the Environmental Quality Board. We have to point out that The Commonwealth of Puerto Rico through "Puerto Rico Permit Process Reform Act, Act No. 161 of December 01, 2009, as amended," the process included in REPED("Environmental Quality Board Regulation for the Presentation, Evaluation and Transmittal Process of Environmental Documents" (REPED)) states that the Permit Management Office (PMO) will undertake the assessment of the environmental compliance process. This regulation as approved provides an assessment process pursuant to Environmental Policy Act (NEPA), performing substantially similar to Puerto Rico Regulation for Environmental Impact Statements. The process was design in accordance with the Environmental Public Policy Act of Puerto Rico, Act No. 416 of September 22, 2004, as amended.

SERP in order to receive DWSRF financing.

In accordance with the SERP, all DWSRF financed projects are classified as either Tier I or Tier II projects. Tier I projects, also referred to as "equivalency" projects, refer to those DWSRF projects that are financed by loans whose cumulative total is an amount equal to the federal Capitalization Grant to the State. Tier II projects, ("non equivalency" projects), refer to all other projects that receive DWSRF financial assistance.

Tier I projects must undergo an environmental review consistent with the National Environmental Policy Act (NEPA). For the DWSRF program, Tier I projects will include:

- projects for which an environmental review consistent with NEPA has already been completed; and
- projects that meet the definition of a NEPA categorical exclusion.

If necessary, additional Tier I Projects will include:

- projects for which applicants have voluntarily undertaken to complete a NEPA equivalent environmental review;
- projects that have a particular environmental significance, due to the nature and scope of the projects; and
- projects for which the environmental review can be considered functionally equivalent to NEPA environmental review, with some minor additional elements.

Tier II projects refer to the environmental review requirements of EQB with additional requirements that may be imposed by the SERP for the DWSRF program. Applicants will be notified by DOH and EQB whether their project(s)

proposed for financing through the DWSRF program fall under the category Tier I ("equivalency") of Tier II.

9. ATTACHMENTS

Attachment I
ESTABLISHMENT OF THE TECHNICAL ASSISTANCE SUPPORT (TAS)

The DWSRF and Capacity Development programs created by the 1996 Safe Drinking Water (SDWA) amendments, empower states to help water systems improve their abilities to comply with the SDWA and protect public health. It is DOH's responsibility to protect the public health, as well as to undertake the enforcement of the Safe Drinking Water Act. Been a primacy agency DOH is also lead agency for the DWSRF. Through the DWSRF, funds are available to undertake these commitments while technically assisting the drinking water systems. There are several sub-programs such as technical assistance, capacity development, operator certification, source water assessment that avail and support the assistance process. DOH has established a Technical Assistance Support (TAS) as part of Puerto Rico's Drinking water Program. TAS will provide in an organized manner the assistance that these systems need and in concert with other Commonwealth assistance initiatives. The purpose is to use of the SRF and set-aside limited resources effectively and efficiently. The TAS established the following priorities:

Capacity Development Program.

Area -Wide Optimization Program

Circuit Rider Program

Having these priorities there are activities associated to each one:

A. Capacity Development Program Activities:

DOH established a Capacity Development Strategy, which is directed to assist small systems. The goal of the Strategy is to assist systems so that they can attain and maintain capacity in order to reach compliance with the SDWA.

Several projects directly associate to capacity development are in process:

Capacity Development Project. With this pilot project in place, the use of the capacity development manual developed by DOH for this purpose will be implemented and validated. This manual is a tool that will assist and guide the systems in understanding and attaining capacity. A Comprehensive Performance Evaluation (CPE) designed for small systems by profiling the system will be implemented. It will also use circuit riders approach to provide technical assistance for compliance with the SDWA. Also systems will be profiled before and after the use of the manual to measure capacity progress.

Operator Certification Project. With this project the systems are been assisted in the process of complying with the federal and state laws concerning the certification of operators. Approximately 900 persons are expected to be trained in their own system thus technical assistance will be undertaken simultaneously because

operational adjustments will happen as part of the training and more than 300 operators are expected to be certified. In addition train the trainer session will be undertaken to assure continuity of the certification process.

Small Systems Security Project. The project is expected to incorporate into small systems, major security concepts considered in the security program in order to provide these systems with the necessary tools for the protection of their water system. This project will be coordinating work groups response to an Emergency Response Plan and Vulnerability Assessment targeted towards small systems.

Small Systems Source Protection Initiative. The initiative will ensure that systems understand their role in the public health protection by protecting their source and making available funding programs to that effect based on the knowledge of the health risk associated to the contamination of their source. This initiative is in accordance to the Commonwealth's Source Water Assessment Program (SWAP) established as approved by EPA where the goal of the SWAP program is to provide meaningful information to direct ongoing source water protection efforts and the overall drinking water program in Puerto Rico. Efforts to identify potential sources of pollution will focus on assembling useful information that will address the greatest threats to drinking water, guide future source protection efforts, and direct the DOH public water system supervision program. The SWAP will provide the information needed to develop programs within the multiple barrier concepts. The major results of the program will direct where and how intensified, site-specific source water protection will be needed. Up to now DOH has:

1. Compiled 1,251 geographic coordinates for the components of public water systems:
 - 878 PRASA coordinates
 - 373 Non-PRASA coordinates
2. Developed an inventory of potential sources of contamination:
 - 8,524 (PSC)
3. Susceptibility analysis
 - 498 systems with sensitivity
 - 320 systems with vulnerability (703 components)
 - 320 systems with susceptibility (703 components)

B: Area -Wide Optimization Program Activities:

1. Develop an Area Wide Optimization Program (AWOP) to identify performance problems and prioritize SRF resources and activities to improve performance at defined small water systems.

- a. **Optimization Programs.** They will provide for the effective and efficient use of the federal and state's limited resources while assistance is provided to the systems and operational adjustments are undertaken to improve performance and compliance.
- b. **Small Systems CPE.** The Comprehensive Performance Evaluation (CPE) has been adapted to small systems as a procedure to evaluate their performance, unit treatment process and factors limiting performance.
- c. **Priority List.** Systems will be prioritized by the use of a priority list in order to attend the systems based on the needs and health based violations.

C. Circuit Riders Program Activities:

1. **Technical Assistance.** DOH has offered technical assistance to systems through the Public Water Supply Supervision Program (PWSS) of the Department of Health Drinking Water program. The DWSRF Program since its establishment has provided support to the PWSS. Several state environmental projects with EPA have been undertaken. Assistance is provided in the areas of operation, maintenance and compliance process. Also advice is offered on the enhancement and need to rehabilitate infrastructure to attain compliance.
2. **Circuit Riders Project.** With the project assistance will be provided to more communities in order to develop the Capacity and AWOP programs.
3. **Circuit Riders Partners.** This initiative intends to broaden and increase the number of human resources that provide direct assistance to the small systems, the training skills in order to lead and target the efforts towards small systems to ensure that these systems have the tools needed to comply with the drinking water regulations. The drinking water program has coordinated government efforts to assist these systems and has participated with other agencies, including EPA, as well as private entities, which have participated in partnership to assist them technically and economically on this regard.

Commonwealth of Puerto Rico
Department of Health
Drinking Water Division
Drinking Water State Revolving Fund



Technical Assistance Support (TAS)

Technical Assistance Support (TAS)

Area-Wide Optimization Program

- CPE - small systems
- Optimization Programs
- Priority List

Capacity Development Program

- Capacity Development Strategy
- Capacity Development Project
- Operator Certification Project
- Small Systems Security Project
- Small Systems Source Protection Initiative

Circuit Riders Program

- Technical Assistance
- Circuit Riders Project
- Circuit Riders Partners

Attachment II
CAPACITY DEVELOPMENT PROGRAM

CAPACITY DEVELOPMENT

The Safe Drinking Water Act (SDWA) Amendments of 1996 (Pub. L. 104-182) authorize a Drinking Water State Revolving Fund (DWSRF). The DWSRF is designed to assist publicly owned and privately owned community water systems and nonprofit non-community water systems in financing the costs of infrastructure needed to achieve or maintain compliance with SDWA requirements, and to meet the public health objectives of the SDWA. Section 1452 (a)(3) of the SDWA prohibits a state from providing DWSRF assistance to a system that lacks technical, managerial, and financial capacity or is in Significant Non-Compliance "SNC" with any requirements of a national primary drinking water regulation or variance, unless: 1) the use of the financial assistance will ensure SDWA compliance, or (2) the owner or operator of the system agrees to undertake feasible and appropriate changes to assure that adequate capabilities will be put in place, and agrees to implement such changes.

The following is a screening process used to assess the technical, managerial, and financial capacity of any DWSRF project sponsor.

I. Technical Capacity

Technical Capacity refers to the adequacy, operation and maintenance of a water system's infrastructure. To assure adequate technical capacity, a project sponsor must demonstrate that its water system has adequate source water and adequate infrastructure, and must demonstrate that its water system is operated by personnel with technical knowledge about applicable standards. In assessing the technical capacity of the water system, the Department of Health will review,

In addition to other information, the following items regarding the project sponsor:

- 1. SDWA Compliance data including recent sampling results, inspections reports and/or Sanitary Surveys to identify actual and potential problems that might lead to non-compliance or degradation of drinking water quality.*
- 2. Operator Certification to evaluate if the water system is operating under an operator certified by the Commonwealth, with the appropriate certification classifications and in accordance with operator certification program as stated in the SDWA.*
- 3. Susceptibility assessments as established by DOH on the Source Water Assessment Program (SWAP) to determine potential source water contamination.*
- 4. Enforcement actions, administrative consent orders, or directives issued to the water system, requiring corrective actions to ensure compliance with the SDWA.*
- 5. Comprehensive Performance Evaluations (CPE's) to analyze a surface water treatment plant's performance.*
- 6. Consumer Complaint Records to identify technical problems with the water system (e.g., odor, taste, or low pressure source capacity to supply actual demand).*
- 7. Engineering reports, project and long-term planning documents, for improvements to ensure compliance with Federal and Commonwealth SDWA regulations, rules, and statutes.*

Note: Significant Non-Compliance refers to long term repeated violations that constitute a threat to public health. A summary of significant non-compliance is attached to this document.

8. Design is in compliance DOH regulation.

The project sponsor's must demonstrate adequate technical capacity as follows.

- 1. The project sponsor and its water system are not in significant non-compliance as defined by EPA.*
- 2. The project sponsor and its water system has no continuing violations under the Commonwealth laws and regulations.*
- 3. The project sponsor is operating its water system under a certified operator, or the appropriate certification pursuant to Commonwealth Operator Certification Process,)/DWSRF Operator Certification Program (Act. No. 53 of July 13, 1978 as amended by Act 29 of January 16, 2002 and Act. No. 59 of May 6, 2002 and by the Regulation for the Certification of Operators of Systems and/or Treatment Plants for Drinking Water and Wastewater, which derogated Regulation No. 5440 of June 27, 1996.*

II. Managerial Capacity

Managerial Capacity refers to the personnel expertise required to administer the overall water system operations. To assure adequate managerial capacity, the project sponsor must demonstrate that relative to its water system it has clear ownership, proper and organized staffing, and effective interaction with regulators and customers. In assessing the managerial capacity of the water

system, the DOH, in consultation with the Puerto Rico Department of State Drinking Water Treatment Plant Operator Certification Board and in accordance with the DOH/Department of State Drinking Water Treatment Plant Operator Certification Program and other Commonwealth Agencies, as appropriate, shall review, in addition to other information, the followings items regarding the project sponsor:

1. A summary of Biographies, Resumes, and other related material from the previous 5 years, to determine the training, expertise and education of personnel.
2. Business or Water System Plan to evaluate management's overall practices and ownership accountability to assist in evaluating the owner's understanding of current DOH regulations and professional practice.
3. A summary of billing and collection procedures used for the water system from the previous 5 years.
4. Consumer Complaint Records within the previous 5 years to identify the water system's responses to customer complaints.
5. Documents that demonstrate ownership accountability and evidence of the community incorporation.
6. Evidence of the compliance and/or the corresponding endorsement of other Commonwealth Agencies concerned with the construction process of water systems.
7. Administrative Structure Flow Chart and Membership selection or establishment procedure.

8. Legal document specifying and assuring the compliance of the System with the SDWA Regulation including mechanisms for user charge fee or process.

The project sponsor's must demonstrate adequate managerial capacity as follows:

1. The project sponsor or its water system shall not be in receivership;
2. The project sponsor demonstrates to the Department's satisfaction that it has clear ownership of the water system or that other arrangements are in place to satisfy the managerial capacity requirements; and
3. The project sponsor and its water system do not have any continuing violations of requirements, rules or statutes of the DOH's and other Commonwealth Agencies as applicable.

III. Financial Capacity

Financial capacity refers to the ability to acquire, generate and manage enough monetary resources to a project sponsor for its water system to support the cost of operating, maintaining, and improving the water system and achieve and maintain compliance with SDWA requirements. To assure adequate financial capacity, the project sponsor must demonstrate that relative to its water system it has sufficient revenues, fiscal controls and credit worthiness. In assessing the financial capacity of the water system PRIFA/GDB, will conducted and evaluate in coordination with DOH as appropriate (in accordance to their standard operation procedures) the financial capability analysis to determine revenue generating and pay back capabilities of the borrower project sponsor through information

require and to be provided on the Business Plan.

1. Business Plan and financial information, including, were available but not limited to the following, shall be evaluated:

- a. Financial statements or annual audit reports for the previous three years.
- b. Current and proposed rate schedules, as applicable; or if rate schedules are unavailable, then documents indicating the project sponsor's access to credit for operations and contingencies to demonstrate the project sponsor's capability to repay debt.
- c. A summary of any pending litigation regarding current or proposed rates.
- d. Federal and state income tax returns of the projects sponsor for the previous 3 years.
- e. Current operating budget and projected budget for a five year or as available period including debt service on the loan and any rate schedule adjustments:
 - (i) Revenue projections including any assumptions on which the projections are based. Total annual percentage of budgetary increases, annual percentage increases to meet loan repayment and other non-loan project costs, and time when same shall take effect should be identified and included.
 - (ii) Expenses projections including a copy of the Capital Budget and assumptions on which the projections are based.

(iii) Plans for rate increases.

f. Composition of customer base

The project sponsor's water systems meet the standards for adequate financial capacity if the following is met:

- 1. Business Plan has been review and approved by DOH and GDB/PRIFA were applicable.*

The referenced Capacity Development Checklist summarizes and outlines the above mentioned activities.

IV. Long-term Capacity

DOH, where appropriate, will assess whether a project sponsor and its water system has a long term plan to undertake feasible and appropriate changes in operations necessary to develop adequate capacity. Information such as engineering reports and other available information will be used in making these assessments. Plan review procedures for these systems are being developed, and may be established and discussed in the Standard Operating Procedures of DOH. DOH has initiated and will continue to encourage consolidation of water systems in an effort to improve capacity.

V. Systems with inadequate capacity

A water system that requires improvement to obtain adequate capacity can apply to the DWSRF provided that the improvements will ensure SDWA compliance. DOH in consultation with the corresponding agencies, as applicable, will make these assessments on a case-by-case basis, with emphasis on compliance with all applicable requirements rules or statutes of the concerned

agencies. The project sponsor must agree and demonstrate to the concerned agencies satisfaction the implementation of any required technical, managerial or financial change necessary to obtain approval by DOH.

VI. Systems in Significant Non-Compliance "SNC"

The SDWA prohibit a state from providing DWSRF assistance to a systems in SNC with any requirements of a national primary drinking water regulation or variance, unless 1) The use of the financial assistance will ensure SDWA compliance, or 2) the owner or operator of the system agrees to undertake feasible and appropriate changes to assure that adequate capabilities will be put in place, and agrees to implement such changes.

The following are procedures that could be use to evaluate systems in SNC while review procedures for systems that are not in compliance are fully developed, established and discussed in the Standard Operating Procedures of DOH

Attachment III
CHECK LIST CAPACITY DEVELOPMENT PROGRAM
NEW DRINKING WATER SYSTEM CAPACITY ASSURANCE PLAN

**COMMONWEALTH OF PUERTO RICO
DEPARTMENT OF HEALTH**

CHECK LIST

**CAPACITY DEVELOPMENT PROGRAM
NEW DRINKING WATER SYSTEM CAPACITY ASSURANCE PLAN**

**AUGUST 1999
Rev'd. April 2004**

I. INTRODUCTION

Under the SDWA a system Capacity is defined as the ability to plan for, achieve and maintain compliance with applicable drinking water standards. The Capacity Development Program consolidates three basic components of drinking water systems that are essential for the effective operation of the systems: Technical, Financial and Managerial components.

II. FEDERAL STATUTORY AUTHORITY FOR CAPACITY DEVELOPMENT

Statutory Authority for Capacity Development is provided under Section 1420 (a) of the SDWA: "State Authority for New Systems" and Section 1452: State Revolving Loan Fund. That is, the State will be entitled to receive funds under the Drinking Water State Revolving Fund (DWSRF) if it has the legal authority or other means for ensuring that New Community Water Systems (CWS) and New Non-Transient Non-Community Water Systems (NTNCWS) demonstrate adequate technical, managerial and financial capacity¹.

The Commonwealth of Puerto Rico, Department of Health's Capacity Development Program/New Drinking Water System Capacity Assurance Plan, will first address compliance with Section 1420 (a) under which a State must develop a program to ensure that all new community water systems² and non-transient non-community water systems demonstrate the technical, managerial and financial capacity to comply with all National Primary Drinking Water Regulations (NPDWR's) in effect, or likely to be in effect on the date of operations³.

III. CAPACITY DEVELOPMENT PROVISION APPLICATION

The new systems provision applies to all new Community Water systems (CWS's)⁴ and all new Non-Transient Non-Community Water Systems (NTNCWS's)⁵ according to Section 1420 (a).

¹Section 1452 (a)(1)(G)(ii): NEW SYSTEM CAPACITY - Beginning in fiscal year 1999 the Administrator shall withhold 20 % of each capitalization grant made pursuant to this section to a State unless the State has met the requirements of Section 1420 (a) (relating to capacity development).

² New systems include both CWS or NTNCWSs being newly constructed as well as systems which do not currently meet the definition of a Public Water System (PWS) but which expand their infrastructure and thereby grow to become CWS or NTNCWSs. Systems not currently PWS and which add additional users and thereby become CWSs or NTNCWSs without constructing any additional infrastructure are not "new systems" for purposes of section 1420 (a) of the SDWA as amended.

³ Section 1420(a): STATE AUTHORITY FOR NEW SYSTEMS - A State shall receive only 80% of the amount that the State is otherwise entitled to receive under Section 1452 (related to State Loan Funds) unless the State has obtained the Legal Authority or other means to ensure that all new community water systems and new Non-Transient, Non-Community Water Systems commencing operations after October 1, 1999, demonstrate technical, managerial and financial capacity with respect to each national primary drinking water regulations in effect, or likely to be in effect, on the date of commencement of operations.

⁴ A CWS is a "public water system, which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents", (40 CFR 141.2).

⁵ A NTNCWS is "a public water system that is not a community water system and that regularly serves at least 25 of the same persons over 6 months per year". (40 CFR 141.2).

IV. LEGAL AUTHORITY

The Puerto Rico Department of Health (DOH) is the agency with the primary responsibility of watching over the health of the people of Puerto Rico, to protect the purity of the drinking water in the Commonwealth of Puerto Rico, to achieve and maintain compliance with National Drinking Water Regulations. This responsibility and authority is granted by Act No. 5 of July 21, 1977 as amended (the Act).

Under the DWSRF the responsibility for performing technical project review is granted to DOH through the Memorandum of Understanding (MOU).

V. LEGAL FOUNDATION ESTABLISHING A STRUCTURED DRINKING WATER TREATMENT PROJECT REVIEW FOR ASSESSING AND ENSURING TECHNICAL, MANAGERIAL AND FINANCIAL CAPACITY

1. Lead Agency for DWSRF⁶

As stated earlier, Act No. 5 of July 21, 1977 as amended on December 28, 1997 by Act No. 193 (the Act) as well as Act No. 32 of July 7, 1997 established the DWSRF as an enduring and viable fund. The Commonwealth agreed through an Operating Agreement that the DWSRF shall be maintained and is available for providing financial assistance as authorized and limited by the Act. This legislation created the DWSRF and authorized DOH to administer the DWSRF as well as any DWSRF related programs such as the Capacity Development, Source Water Assessment and Operators Certification.

For the Commonwealth of Puerto Rico and in accordance with the Memorandum of Understanding (MOU) for DWSRF activities, there are five Agencies coordinating the establishment and development of the DWSRF. These agencies are the Puerto Rico Department of Health (DOH), the Puerto Rico Infrastructure Financing Authority (PRIFA), the Puerto Rico Aqueduct and Sewer Authority (PRASA), the Puerto Rico Environmental Quality Board (PREQB) and the Government Development Bank for Puerto Rico (GDB).

2. Agency with Primary Public Health responsibility⁷

There are several Laws and Regulations that confer DOH the power and authority to execute the activities stated in the SDWA and thus in the Memorandum of Understanding for the DWSRF projects. The Act established the "Public Policy to be executed in the Commonwealth as to protect the purity of the Drinking Water in the Commonwealth and Conservation of the

⁶ Not necessarily presented in an empowerment order

⁷ Not necessarily presented in an empowerment order

Environmental and other Natural Resources". It also authorizes the Secretary of Health to promulgate Regulations, establish penalties and other purposes.

As a fundamental area for DOH the Act provides the power and authority to manage the public health matters. DOH is granted the authority to immediately restrain any person or institution from engaging in any activity, which is endangering or causing damage to the public health (control point).

3. Agency with the Primacy for Public Water Systems⁸

DOH is structured to address any concern related to Drinking Water Systems. The Public Water Supervision Program (PWSS) under the Secretariat for Environmental Health is the most concerned area of the Department that will undertake the review process for all projects including DWSRF projects. During the review process: 1) The proponent submits to DOH document for evaluation or review, 2) Technical and Engineering reviews are performed within the PWSS program and 3) The DWSRF Program Division evaluates.

VI. CONTROL POINTS

A control point is a crux in a new system's development at which a State (or other unit of government) can exercise its authority to ensure the demonstration of a new system capacity. A control point or sets of control points taken together must allow for review of the entire scope of the proposed new system development.

Previously control points have been mentioned in the discussion of Part IV (the Legal Authority) and Part V. Following, specific control points will be discussed. In the new systems development process a statutory authority requires demonstration of technical, managerial and financial capacity at one or more control points. In the DOH review process there are currently three endorsements (that are used as control points) that must be granted before a new system can operate:

- a development endorsement (preliminary)
- a construction endorsement
- an operating endorsement

The primary control points for ensuring that new systems demonstrate capacity will be the development and construction endorsements. These are required through the standard operating procedures of the Plan Review Section of DOH and are required or included with the submittal of an engineering Report and a Business Plan. The Engineering Report will be used by DOH to assess the Technical capacity and the Business Plan will be used to assess Financial and Managerial capacity.

⁸ Not necessarily presented in an empowerment order.

VII. CAPACITY ASSESSMENT CRITERIA AND SCREENING PROCESS TO ASSESS THE TECHNICAL, MANAGERIAL AND FINANCIAL CAPACITY OF ANY SYSTEM

Evaluation criteria as well as requirements that must be complied with by the systems have been established in order to receive DOH's endorsements for the different stages or phases in the development process.

1. Criteria

A. New Systems

1. Demonstrate that the system to be constructed will comply with by supplying the change in water demand that may arise if there is an increase in population without undertaking modifications within the first five years (5) of the operation. The most recent U.S. regional census may be used for estimating the increase.
2. Submit, request and comply with the endorsements of the Department of Health for the development /construction and operation of a PWS as detailed and stated in the Manual "REQUISITOS DEL DEPARTAMENTO DE SALUD PARA OTORGAR ENDOSOS A PROYECTOS RELACIONADOS CON ACUEDUCTOS PUBLICOS" ("REQUIREMENTS OF THE DEPARTMENT OF HEALTH FOR AWARDED ENDORSEMENT TO PROJECTS RELATED TO DRINKING WATER SYSTEMS") as well as any other requirements established in the Act and the Regulations and under the PWSS program and the DWSRF Program.
3. Comply with the permits and endorsements of the Government agencies that are concerned or regulate the construction and /operation of the system:
 - (a) Department of Natural Resources (DNR), Regulations and Permits Administration (RPA), Puerto Rico Environmental Quality Board (PREQB), Puerto Rico Department of Health (DOH) and others.
4. Present evidence or demonstrate that the entity that will be administering the system is incorporated through the Puerto Rico Department of State.
5. Must provide a legal document (enforceable) where all duties and responsibilities of all the members of the entity in charge of undertaking the operation, maintenance and administration of the PWSS are stated and whose main purpose is the compliance with the Regulation "For Protecting

the Purity of the Drinking Water of Puerto Rico" and the DWSRF Program or any other regulations.

6. The entity in charge of the administration, the operation and function of the system will have no less than the following positions occupied:

- Administration: President, Vice President, Treasurer, Secretary, and one person with knowledge on Drinking Water Regulations Compliance Operation and Maintenance
- Operators (Certified in accordance with the Puerto Rico Examining Board for certifying operator) and DWSRF/Operator Certification Program.

7. Submit a document including Initial Construction Cost and an Estimate of Operation and Maintenance Cost expected for next five (5) years.

- Include within the Operation and Maintenance Budget Expense for all sampling required, a fund for emergency situation, repairs (pipe, pumps, etc.), technical services expenses (plumbers, electrician, engineers, well driller, mechanic; administrative personnel, counselors, certified public accountants, etc.), loan repayments and all necessary expenses for the operation of the system in compliance with the regulations.
- Include a mechanism demonstrating how all costs will be covered i.e. water rate charge estimated or fixed rate, etc.

8. Prepare and submit a copy of the Operation/ Maintenance Manual to be use by the Operator of the System to be constructed

Number 4 thru 7 (4,5,6,7) above refers to the Business Plan. Number 1, 2, 3 and 8 above refers to the Engineering Report.

2. Screening Process/Minimum Standard to be Sufficed

The following is a screening process used to assess the technical, managerial, and financial capacity of any DWSRF project sponsor.

A. Technical Capacity

Technical Capacity refers to the adequacy, operation and maintenance of a water system's Infrastructure. The Engineering Report will be used by DOH to assess the Technical Capacity.

B. Managerial Capacity

Managerial Capacity refers to the personnel expertise required to administer the overall water system operations. The requirements for Managerial capacity review have been spread across the Business Plan

C. Financial Capacity

Financial capacity refers to the ability to acquire, generate and manage enough monetary resources to a project sponsor for its water system to support the cost of operating, maintaining, and improving the water system and achieve and maintain compliance with the SDWA requirements. Additional information required by PRIFA/GDB and/or DOH must be included on the Business Plan. The project sponsor's water systems meets the standards for adequate financial capacity if the Business Plan has been revised and approved by DOH and GDB/PRIFA were applicable.

3. Project Capacity Evaluation Process

Within the Plans Review Section all documents (technical and engineering) related to DWSRF facilities as well any Commonwealth Project are reviewed and endorsed. Project reviewed or evaluation is carried for the stages of planning or development through an engineering report, which will include spread across data of the Business Plan. Design, Construction and Operation are also evaluated through plans and specifications and information provided in the Business Plan.

Note:

Revised on April 2004 for minor corrections such as: (1) change PASS and PAWS for PWSS and (2) presentation issues (spaces and continuity of the sections-pages 5 and 6, and letter size-pages 2 to 7.)

Attachment III
CHECK LIST CAPACITY DEVELOPMENT PROGRAM
NEW DRINKING WATER SYSTEM CAPACITY ASSURANCE PLAN

DOH REVIEW PROCESS - CHECK LIST

Endorsements that must be granted before a new system can operate:

- I. Development endorsement
- II. Construction endorsement
- III. Operating endorsement

I. Development Endorsement

A. *Development process (planning) preliminary endorsements*

Proponent must submit the following documents before the preliminary endorsement is granted.

1. Engineering Report (Preliminary)

a. Project Planning Area

Area to be served

- Problem definition
- Location (maps, photograph, sketches)

b. Existing Facilities

- Conditions facilities
- History
- Location Map (may be identified on project planning area maps)

c. Population Projections

- Present Population
- Future Population

d. Water Demand and Needs

- Present Demand
- Future Demand

e. Evaluation of Alternatives

- Description
- Maps
- Cost Estimates

- Land Requirements (Acquisition or Rights of Way)
- Construction Problems
- Source of Supply
- Storage
- Distribution systems
- Pressure

____ f. Propose Alternative

____ g. Preliminary Cost Estimate

____ h. Conclusion and Recommendations

____ i. Infrastructure Replacement Plan

- Estimated replacement date for all equipment, given the life span provided in the system description
- Estimated equipment replacement costs (must also be included as a line item in the project budget)
- Source of funding for equipment replacement.

____ j. Operation Replacement Plan (Operation & Maintenance (O&M))

The proper operation and maintenance manual of Water Facilities is essential to insure that a 20 years useful life. An Operation & Maintenance Manual is necessary to achieve the design life and is an essential component of the plan of operation. The content of the manual should be in accordance with the Commonwealth and Federal and Operator Certification Program and DWSRF Requirements and it should include or be at least as follows:

- An overview of the operations plan
- Names, responsibilities, qualifications, and training of operating personnel
- A description of routine operation and maintenance procedures for source meters, pumping plants, treatment works, and disinfection
- Complaint response procedures

- Water quality violation response procedures (particularly for microbial contaminants)
- Raw water Analysis
- Water quality monitoring plan for water sources, the treated water and distribution system. This plan, updated annually, should define the water quality constituents; specific the sample, location, frequency, and next sample date; and identify the laboratory conducting the analysis. The costs of implementing the plan should be identified and included as a line item in the projected budget.
- A description of record keeping and reporting procedures, including a description of all required records.

___ k. Operator Training Plan: To stay current with new requirements, new technologies, and new hazards, all water system operators should be adequately trained, and the system should have a program to provide for continuing education. Adequate training and continuing education are essential components of assuring a safe and potable water supply to customers. This plan should be in accordance with the Commonwealth and Federal Operator Certification Program.

___ l. Operator Certification with the appropriate classification.

___ m. Comprehensive Performance Evaluation (CPE).

___ 2. Environmental Assessment/Archeological Report

DOH evaluates and comments the documents. If the document is complete, DOH notifies the proponent of the approval of the planning document or Preliminary Engineering Report.

___ B. Engineering Report (Final) - is submitted to DOH for final evaluation.

II. Construction Endorsement

With an approved planning document or Engineering Report and a Development Endorsement, the proponent submits to DOH, the project's design and required technical data as well as the Business Plan.

 A. *Business Plan and financial information, including, but not limited to the following, shall be evaluated:*

 1. Financial statements or annual audit reports for the previous three years and interim financial statements not to exceed sixty (60) days old.

 2. Current and proposed rate schedules, as applicable; or if rate schedules are unavailable, then documents indicating the project sponsor's access to credit for operations and contingencies to demonstrate the project sponsor's capability to obtain credit and/or repay debt.

 3. A summary of any pending litigation regarding current or proposed rates.

 4. Federal and state income tax returns of the projects sponsor for the previous 3 years.

 5. Current operating budget and a projected budget, for a five-year period including debt service on the loan and any rate schedule adjustments:

 a. Projected revenue and expenditures. First year to be prepared on a monthly basis. (shall include all assumptions for projected figures). Total annual percentage of budgetary increases, annual percentage increases to meet loan repayment and other non-loan project costs, and time when it shall take effect should be identified and included.

 b. Cash flow projections. First year to be prepared on a monthly basis

 c. Plans for rate increases.

 d. Capital Improvement Program and Financing Sources.

 e. Pro forma balance sheet.

- ____ f. Detail of long term debts, including existing and any to be incurred as a source of financing. (shall include name of creditor, balance, terms and collateral)
- ____ 6. In the case of Municipality, it must have the legal margin available to request financing, as provided by the Municipal Financing Act, as amended or any other law or regulation on municipal financing, and payment capacity or, in the case of Municipal revenue bonds, a feasibility study developed by a competent entity with the expertise in the industry in which the Municipality plans to enter with the project.
- ____ 7. Composition of customer base.
- ____ 8. Consumer Complaint Records within the previous 5 years.
- ____ 9. Documents that demonstrate ownership accountability/and evidence of the community's incorporation.
- ____ 10. Evidence of the compliance and/or the corresponding endorsement of other Commonwealth Agencies concerned with the construction process of water systems.
- ____ 11. Legal document specifying and assuring the compliance of the System with the SDWA Regulation including mechanisms for user charge fee or process.

____ B. *Design (Plan and Specifications)*

The DOH has adopted the "Rules and Regulations for the Design Standards of the Puerto Rico Aqueduct and Sewer Authority (PRASA)" Standards for Water Systems

During the process the following is conducted and evaluated:

- Plans & Specifications review, soil studies and cost estimates, mitigation measures and the Business Plan
- Design meetings, if necessary
- Other agencies endorsements applicable

After the approval of the Design and Business Plan, Construction Endorsement is granted.

III. **Operating Endorsement**

____ A. *Business Plan* - complete and approved.

____ B. *Final Inspection* - major deficiencies noted during this final inspection must be resolved prior to release of final Operating Endorsement, which is subject to the final inspection acceptance and the Build Plans completion.

Attachment IV
FAMILY INCOME LEVELS

June/1998

FAMILY INCOME LEVELS (MFIL)

NEEDS TO BE UPDATED

TABLE 1 - ALLOWANCE FOR FACILITIES PLANNING AND DESIGN

Building Cost	Allowance as a percentage of Building Cost	Building Cost	Allowance as a percentage of building cost
\$ 100,000 or less	27.5396	\$ 100,000 or less	16.2798
120,000	26.8177	120,000	15.9235
150,000	25.9599	150,000	15.4983
175,000	25.3834	175,000	15.2112
200,000	24.8944	200,000	14.9667
250,000	24.0981	250,000	14.5669
300,000	23.4663	300,000	14.2483
350,000	22.9452	350,000	13.9844
400,000	22.5032	400,000	13.7596
500,000	21.7833	500,000	13.3922
600,000	21.2124	600,000	13.0992
700,000	20.7413	700,000	12.8565
800,000	20.3418	800,000	12.6498
900,000	19.9956	900,000	12.4705
1,000,000	19.6910	1,000,000	12.2170
1,200,000	17.1564	1,200,000	10.7751
1,500,000	16.6076	1,500,000	10.4873
1,750,000	16.2389	1,750,000	10.2930
2,000,000	15.9259	2,000,000	10.1276
2,500,000	13.6029	2,500,000	8.6975
3,000,000	13.2464	3,000,000	8.5071
3,500,000	12.9522	3,500,000	8.3496
4,000,000	12.7026	4,000,000	8.2154
5,000,000	12.2963	5,000,000	7.9959
6,000,000	10.7766	6,000,000	7.0389
7,000,000	10.5373	7,000,000	6.9085
8,000,000	10.3343	8,000,000	6.7975
9,000,000	10.1585	9,000,000	6.7010
10,000,000	10.0036	10,000,000	6.6159
12,000,000	8.6591	12,000,000	5.7522
15,000,000	8.3821	15,000,000	5.5986
17,500,000	8.1960	17,500,000	5.4948
20,000,000	8.0381	20,000,000	5.4065
25,000,000	7.1325	25,000,000	4.8236
30,000,000	6.9456	30,000,000	4.7181
35,000,000	6.7913	35,000,000	4.6307
40,000,000	6.6605	40,000,000	4.5563
50,000,000	6.4474	50,000,000	4.4345
60,000,000	6.2785	60,000,000	4.3375
70,000,000	6.1390	70,000,000	4.2572
80,000,000	6.0207	80,000,000	4.1828
90,000,000	5.9183	90,000,000	4.1294
100,000,000	5.8281	100,000,000	4.0769
120,000,000	5.4174	120,000,000	3.8065
150,000,000	5.2441	150,000,000	3.7048
175,000,000	5.1277	175,000,000	3.6362
200,000,000 (or more)	5.0289	200,000,000 (or more)	3.5778

Note: The allowance does not reimburse for cost incurred. Accordingly, the allowance Tables should not be used to determine the compensation for planning or design services. The compensation for planning and design services should be based upon the nature, scope and complexity of the services required by the community.

Note: The allowance does not reimburse for costs incurred. Accordingly, the allowance Tables should not be used to determine the compensation for planning or design services. The compensation for planning or design services should be based upon the nature, scope and complexity of the services required by the community.

Attachment V
SYSTEM CRITERIA AND RANKING METHODOLOGY
(Summary)

System Criteria and Ranking Methodology (Summary)

The priority System sets priorities for the proposed projects according to their capacity to achieve and or to maintain compliance with the SDWA requirements and protection of the public health. Priority will be given to water systems in non-compliance with the surface water treatment requirements, and those incurring acute, primary or action level violations as defined in the SDWA. Addressing these problems will protect the public health of the water users and will bring water systems into compliance with the SDWA.

The next priority has been given to System that address the most serious risks to public health therefore the highest priority will be given to acute public health risks, particularly those related to microbiological organism. Situations that pose chronic and longer-term risks to consumers, such as organic chemical contamination, are also considered. The scoring criteria also consider issues that are related to infrastructure upgrading or replacement correction of a problem or improvements if included on the projects scope.

DOH will rank all eligible projects according to the total number of points each project receives and will subsequently place the projects on the Project Priority List according to their ranking. The project with the higher number of points ranks above those with lesser points. For project which include multiple elements as listed in priority category A below, projects will be separately listed by the elements involved, and priority points will be assigned for each element.

Points are assigned for each of the seven priority categories discussed below, as applicable:

- A. **Compliance with Safe Drinking Water Act (SDWA)** DWSRF funds are to be utilized to address contamination problems through compliance requirements. Projects related to systems and or systems which utilize surface water or ground water under the direct influence of surface water, that are not in compliance with the surface water treatment requirements or have had any acute violations (e.g., fecal coliform or nitrates) and have been issued an administrative order, directive or recommendation by DOH requiring the correction of any noncompliance of its treatment facilities to address an immediate public health threat will be scored according the following:

* Maximum Contaminant Level (MCL)/Treatment Technique Violations (more than one item may apply:

1. Microbiological

a) Surface Water Treatment Rule

- | | | |
|-----|--|---------|
| i | Filtration and/or groundwater wells, interconnection and or consolidation of water systems to comply with the SOWA | 100 pts |
| ii | Filtration Performance (NTU compliance) | 50 pts |
| iii | CT Disinfection | 30 pts |

- | | |
|---|--------|
| c. Existing wells | 10 pts |
| d. Existing disinfection system for a groundwater/
surface water supply | 25 pts |
| e. Transmission main | 10 pts |
| f. Finished water or distribution storage | 10 pts |
| g. Other water treatment systems (or replacement
of source instead of treatment | 10 pts |
| 3. Aged mains and appurtenances | 5 pts |
| 4. Redundancy of critical components (pumps, valves
chemical feed-systems, etc. | 5 pts |
| 5. Asbestos main replacement | 5 pts |
| 6. Control/automation for operational efficiency
(computerization, control valves, metering
Laboratory upgrading) | 5 pts |
| 7. Inadequate source capacity, which is not a public
health hazard can only receive points for Criteria B1 or C7 | 5 pts |

D. Governmental Needs (more than one may apply) - Additional points will be assigned to a project on the basis of state or local governmental needs, policies, and/or requirements.

- | | |
|--|--------|
| 1. Development of a water system or extending existing system
to service contaminated or insufficient yielding private
wells at existing residential housing (new systems are
not eligible for points under Criteria A, B or C2 | 25 pts |
| 2. Consolidation of water system's (can include improving
technical, managerial and financial capacity development | 25 pts |
| 3. System depend on a Sole Source Aquifer for its source.
(These points can only be obtained if system scores
- points from Criterion A, B or C) | 10 pts |
| 4. A project that has received written commitment of
funding from another source (e.g. co-funded with
Clean Water SRF, Rural Development, F-IUD, etc.) | 10 pts |
| 5. Proposes operational changes that improve and insure
adequate technical, managerial and financial capacity
of the system in order to insure compliance (guidelines
to be developed) | 5 pts |

E. Other Factors

As a tie breaker, projects will be assigned points based in the population of the water system service area. Priority points will be calculated as the population served by the water system divided by 100,000, expressed as a decimal and added to the total accumulated.

F. Special Priorities

The determination will be made as follows:

- Maximum project size will be 10,000 persons. Projects may not be segmented in order to qualify for hardship assistance.
- Refinancing is eligible through the regular subsidized DWSRF Program if qualified or eligible as required and stated in the DWSRF. However, hardship financial assistance is only available for new drinking water projects for which the notice for construction to proceed was given on or after July 1, 1993.
- The applicant for a DWSRF hardship loan must demonstrate that it can repay its debt obligation, has a satisfactory O&M procedure and can comply with DOH/DWSRF Capacity Development Program.
- Projects that are determined eligible for hardship assistance, will receive a written confirmation of eligibility.
- Confirmation of funding availability will be valid for two consecutive annual federal funding cycles, provided that the projected service charge does not change significantly.
- Confirmation of funding availability may be withdrawn if: the applicant fails to demonstrate satisfactory progress towards project implementation; the information on which the determination was made changes prior to loan closing; or the applicant fails to demonstrate that it can repay the loan.

H. Green Portion (only for Green Projects)

The fiscal year (FY) 2010 Appropriation Law (P.L. 111-88) includes specific goals and eligibilities for green infrastructure, water and energy efficient improvements; and environmentally innovative activities. Green projects could enable utilities to take savings derived from reducing water losses and energy consumption, and use them for public health and environmental enhancement projects. Additionally, green projects will help the water sector improve the quality of water services without putting additional strain on the energy grid, and by reducing the volume of water loss every year.

The following process was established for the selection for funding of those eligible GPR projects based on the technical aspects of the DWSRF green projects:

1. Water efficiency
 - a. Replacement or rehabilitation of distribution lines to reduce water loss and prevent water main breaks (Business Case (BC) required) 10 pts.
 - b. Retrofit, replace, purchase and/or install water efficient fixtures, fittings, equipment 5 pts.
 - c. Purchase or install water meters, automatic

until the per cent requirement is met but in a separate process for the GPR projects only which was established by DOH taking into consideration the green technical nature of the project .

I. Eligibility Criteria for Additional Subsidies

The recipient of the grant must identify projects within at least one of the following categories in order to receive the additional subsidies:

- a) projects that will eliminate or consolidate small system,
- b) projects that support sustainable systems and help build or maintain the technical, financial and managerial capacity of the recipient;
- c) systems related to communities or serving directly a community that could not otherwise afford the DWSRF loan including Disadvantaged communities as defined by the Commonwealth.

If the recipient has projects that could be identified under one or more of the above mentioned categories, for each additional remaining category the percent will increase by 5%.

The subsidy will be awarded to eligible recipients as follows:

- to project(s) by priority order and the qualifying category and until the subsidized amount is completely used.

In the case that there is only one recipient the subsidized amount could be awarded in any of the following manners and until the subsidized amount is completely used.

- To project(s) by priority order and the qualifying category
- directly to the project(s) identified within the qualifying categories
- the project(s) first received and ready to go
- The most expensive project (s)

Attachment VI
CHECK LIST FOR PRIORITY RANKING/PROJECT FACT SHEET
Pages 22 to 26)

CHECK LIST FOR PRIORITY RATING/PROJECT FACT SHEET**I. General Information must be provided:**

1. The prospective applicant that may be applying for a loan.
2. Identify the appropriate contact person who will represent the drinking water system.
3. Describe the proposed project and the need for the proposed project.
4. Construction cost estimate.
5. Deficiency report and/or Comprehensive Performance Evaluation (CPE).
6. Preliminary Engineering Report.
7. Indicate the Median Family Income Level that is applicable to the service area of the water system.

II. System Criteria Information:**A. Compliance with Safe Drinking Water Act (SDWA) Indicate if:**

___ 1. The project is related to systems and/or systems which utilize surface water or ground water under the direct influence of surface water that are not in compliance with the surface water treatment requirements.

___ 2. Or have had any acute violations (e.g., fecal coliform or nitrates) and have been issued an administrative order, directive or recommendation by DOH requiring the correction of any noncompliance of its treatment facilities to address an immediate public health threat for one or more of the following:

A. Maximum Contaminant Level (MCL) / Treatment Technique Violations (more than one item may apply:**1. Microbiology****a. Surface Water Treatment Rule**

___ i. Filtration and/or groundwater wells, interconnection and/or consolidation of water systems to comply with the SDWA

___ ii. Filtration Performance (NTU compliance)

___ iii. CT Disinfection

___ b. E. Coli**___ c. Total Coliform****2. Organics-**

___ a. Organics Chemical (SOC/VOC) and disinfection by-products

___ 3. Maximum Contaminant Level (MCL) violations (except acute violations) or exceedance of action levels Lead and Copper/Corrosion (mandated)

___ 4. Radiological

___ 5. Inorganic/Physical

___ a. Nitrates

___ b. Other health-related inorganic

B. Public Health Risk - indicate if :

___ 1. Projects which eliminate critical or chronic or potential health hazard

___ 2. Provide protection against significant health hazard (Documentation must be provided by the applicant to determine if the public health problem exist)

___ 3. Indicate if the appurtenance is a:

- ___ a. rehabilitation
- ___ b. replacement
- ___ c. repair

For:

- ___ 1. Inadequate Source Capacity
- ___ 2. Existing transmission or distribution mains to prevent contamination caused by leaks/breaks in the pipe
- ___ 3. Improve water measures to maintain safe levels
- ___ 4. Existing pump stations
- ___ 5. Finished water storage (uncovered if applicable)
- ___ 6. New finished water storage facilities needed to maintain pressure in the system and/or prevent contamination

C. Systems in needs (Reliability Dependability) – Indicate if the projects are related to the existing treatment facilities or systems components to meet the design standards sanitary code:

- 1. replacement
- 2. major rehabilitation

Indicate the action to be undertaken for:

- 1. Complete replacement
- 2. major rehabilitation

of the existing surface water filtration facility that has exceeded design life and/or does not meet the design standards in the current edition of PRASA's Design Standards.

In lieu of:

- ___ a. filtration
- ___ b. installation of groundwater wells
- ___ c. interconnection with, or purchase from adjacent water system

Indicate the action to be undertaken for components to meet the design standards in the current edition of PRASA's Design Standards:

- 3. upgrade
- 4. replacement
- 5. installation for major vulnerable system

The following may apply:

- ___ a. A principal component integral to an existing filtration process such as sedimentation, flocculation, filtration, chemical feed, of backwashing (select one of the indicated above)
- ___ b. Pumps stations
- ___ c. Existing wells
- ___ d. Existing disinfection systems for a groundwater/surface water supply (select one of the indicated above)
- ___ e. Transmission main
- ___ f. Finished water or distribution storage
- ___ g. Other water treatment systems (or replacement of source instead of treatment)

6. Aged mains and appurtenances
7. Redundancy of critical components (pumps, valves, chemical feed-systems) (select one of the indicated above)
8. Asbestos main replament
9. Control/automation for operational efficiency (computerization, control valves, metering, laboratory upgrading) (select one of the indicated above)
10. Inadequate soyurce capacity which is not a public health hazard

D. Governmental Needs (more than one may apply)

Indicate if project is to service contaminated or insufficient yielding private wells at existing residential housing:

1. Development of a water systems
2. Extending existing system
3. Indicate if the systems is to:
 - a. Consolidation of water systems (can include improving technical, managerial and financial capacity development (name the system been consolidated)
4. System depends on a Sole Source aquifer for its source (These points can only be obtained if system scores points from Criterion A, B or C)
5. A project that has received written commitment of funding from another sources. Indicate type of source. Indicte type of source (eg co-funded with Clean Water SRF, Rural Development, HUD, etc.)
6. Purposes operational changes that improve and insure adequate technical, managerial and financial capacity of the system in order to insure compliance.

E. Other Factors

Indicate if the population of the water system service area.

F. Special Priorities

Strategy

Strategy _____
CPE _____

Emergencies

- situations that result in the unavailability of potable drinking water for an extended period of time or
- evidence of a high incidence of water transmissible diseases
- evidence of presence of Regulated Contaminants in Drinking Water

G. Affordability

Provide on a per family basis, Median Household Income Levels (MFIC) at the service area and:

- **Existing population of the project service area.**
- **Number of Dwelling** to be served, institutional users, and the basis on which they were calculated,
- Existing annual debt service of the system.
- Estimated project costs.
- Estimated O & M cost based upon completion of this project.
- Any other sources of funding anticipated for this project, including the amount, type of funding (loan and grant) and if a loan, its interest rate, term and annual debt payment.
- Maximum project size will be 10,000,000 persons. Projects may not be segmented in order to qualify for hardship assistance.
- **Refinancing** is eligible through the regular subsidized DWSRF program if qualified or eligible **as required and stated in the DWSRF**. Additional information may be requested by GDB/PRIFA.
- The applicant for a DWSRF hardship loan must demonstrate that it can repay its debt obligation **has a satisfactory O&M procedure and can comply with DOH/DWSRF Capacity Development Program**.
- Projects that are determined eligible for hardship assistance, will receive a written confirmation of eligibility.
- Confirmation of funding availability will be valid for two consecutive annual federal funding cycles, provided that the projected service charge does not change significantly.
- Confirmation of funding availability may be withdrawn if: the applicant fails to demonstrate satisfactory progress towards project implementation; the information on which the determination was made changes prior to loan closing; or the applicant fails to demonstrate that it can repay the loan.

H. Green Portion (only for Green Projects)

The fiscal year (FY) 2010 Appropriation Law (P.L. 111-88) includes specific goals and eligibilities for green infrastructure, water and energy efficient improvements, and environmentally innovative activities. Green projects could enable utilities to take savings derived from reducing water losses and energy consumption, and use them for public health and environmental enhancement projects. Additionally, green projects will help the water sector improve the quality of water services without putting additional strain on the energy grid, and by reducing the volume of water loss every year.

The following process was established for the selection for funding of those eligible GPR projects based on the technical aspects of the DWSRF green projects:

1. Water efficiency

- a. Replacement of rehabilitation of distribution lines to reduce water loss and prevent water main breaks (Business Case (BC) required).
- b. Retrofit, replace, purchase and/or install water efficient fixtures, fittings, equipment

- _____ c. Purchase or install water meters, automatic meter reading equipment and systems, and pipe
- _____ d. Storage tank replacement/rehabilitation to reduce water loss (Business Case (BC) required)
- _____ e. Installing Pressure Reduced Valves (PRV)

2. Energy efficiency

- _____ a. Replacement or rehabilitation of distribution lines (Business Case (BC) required)
- _____ b. Energy efficient retrofits, upgrades or new pumping systems and treatment processes (including variable frequency drives (Business Case (BC) required)
- _____ c. Works that cost effectively eliminate: pumps, pump stations, filtrations plants, well. (Business Case (Business Case (BC) required)
- _____ d. Producing clean power for treatment systems on site (wind, solar, hydroelectric, geothermal, biogas power)
- _____ e. Automated and remote control systems (SCADA) that achieve substantial energy savings (Business Case (BC) required)

3. Environmental Innovative Activities

- _____ a. Enables utility to adapt to impacts of global climate change
- _____ b. Total Water Management project where life cycle costs are minimized

4. Green Infrastructure- to manage water resources in a sustainable way

- _____ a. Implementation of wet weather management systems for utilities building and parking areas (porous pavement, bio-retention, trees, green roofs, other practices that mimic natural hydrology)

ATTACHMENT VII
EPA MEMORANDA OF NOV 30, 2009 AND MAY 20, 2011
(ATTACHMENT 5 and 6 of the 2012 Procedures)

Attachment 5



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 3 0 2009

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Application of Davis-Bacon Act Wage Requirements to Fiscal Year 2010 Clean Water State Revolving Fund and Drinking Water State Revolving Fund Assistance Agreements

FROM: Peter S. Silva *Michael Shyns for*
Assistant Administrator

TO: Water Management Division Directors
Regions I - X

On October 30, 2009, P.L. 111-88, "Making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes," was enacted. This law provides appropriations for both the Clean Water State Revolving Fund (CWSRF) and the Drinking Water State Revolving Fund (DWSRF) for Fiscal Year 2010, while adding new requirements to these already existing programs. One new requirement, and the focus of this memorandum, requires the application of Davis-Bacon Act requirements.

P.L. 111-88 includes the following language in Title II under the heading, "Administrative Provisions, Environmental Protection Agency,"

For fiscal year 2010 the requirements of section 513 of the Federal Water Pollution Control Act (33 U.S.C. 1372) shall apply to the construction of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund as authorized by title VI of that Act (33 U.S.C. 1381 et seq.), or with assistance made available under section 205(m) of that Act (33 U.S.C. 1285(m)), or both.

For fiscal year 2010 the requirements of section 1450(e) of the Safe Drinking Water Act (42 U.S.C. 300j-9(e)) shall apply to any construction project carried out in whole or in part with assistance made available by a drinking water treatment revolving loan fund as authorized by section 1452 of that Act (42 U.S.C. 300j-12).

In order to comply with this provision, States must include in all assistance agreements, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, executed on or after October 30, 2009 (date of enactment of P.L. 111-88), and prior to

Attachment 5

2

October 1, 2010, for the construction of treatment works under the CWSRF or for any construction under the DWSRF, a provision requiring the application of Davis-Bacon Act requirements for the entirety of the construction activities financed by the assistance agreement through completion of construction, no matter when construction commences.

Application of the Davis-Bacon Act requirements extend not only to assistance agreements funded with Fiscal Year 2010 appropriations, but to all assistance agreements executed on or after October 30, 2009 and prior to October 1, 2010, whether the source of the funding is prior year's appropriations, state match, bond proceeds, interest earnings, principal repayments, or any other source of funding so long as the project is financed by an SRF assistance agreement. If a project began construction prior to October 30, 2009, but is financed or refinanced through an assistance agreement executed on or after October 30, 2009 and prior to October 1, 2010, Davis-Bacon Act requirements will apply to all construction that occurs on or after October 30, 2009, through completion of construction.

Notably, there is no application of the Davis-Bacon Act requirements where such a refinancing occurs for a project that has completed construction prior to October 30, 2009. This provision does not apply to any project for which an assistance agreement was executed prior to October 30, 2009, no matter when construction occurs.

Further information may be provided in the form of "Questions and Answers" if necessary.

We fully understand the complexity of this provision and the difficulties involved in its application. If you have any question, please contact us, or have your staff contact Jordan Dorfman, Attorney-Advisor, State Revolving Fund Branch, Municipal Support Division, at (202) 564-0614, or Philip Metzger, Attorney-Advisor, Infrastructure Branch, Drinking Water Protection Division, at (202) 564-3776.

ATTACHMENT 6

Wage Rate Requirements Under FY 2012 Appropriations Act

Preamble

With respect to the Clean Water and Safe Drinking Water State revolving Funds, EPA provides capitalization grants to each State which in turn provides subgrants or loans to eligible entities within the State. Typically, the subrecipients are municipal or other local governmental entities that manage the funds. For these types of recipients, the provisions set forth under Roman Numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section I-5.

Occasionally, the subrecipient may be a private for profit or not for profit entity. For these types of recipients, the provisions set forth in Roman Numeral II, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section II-3(ii)(A), below and for compliance as described in Section II-5.

I. Requirements under FY 2012 Appropriations Act For Subrecipients That Are Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the FY 2012 Appropriations Act with respect to State recipients and subrecipients that are governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient may contact (insert name or organizational unit Regional EPA DB contact) for guidance. The recipient or subrecipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/esa/whd/recovery/>

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the FY 2012 Appropriations Act, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the subrecipient shall monitor www.wdol.gov weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.
- (ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2012 Appropriations Act, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The

State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the

Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social

security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the

required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not

less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for

unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates.

The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

II. Requirements under FY 2012 Appropriations Act For Subrecipients That Are Not Governmental Entities

The following terms and conditions specify how recipients will assist EPA in meeting its DB responsibilities when DB applies to EPA awards of financial assistance under the FY2011 Full-Year Continuing Appropriation Act with respect to subrecipients that are not governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient for guidance. If a State recipient needs guidance, the recipient may contact (insert name or organizational unit Regional EPA DB contact) for guidance. The recipient or subrecipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/esa/whd/recovery/>

Under these terms and conditions, the subrecipient must submit its proposed DB wage determinations to the State recipient for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the FY 2011 Full-Year Continuing Appropriation, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking

water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Subrecipients must obtain proposed wage determinations for specific localities at www.wdol.gov. After the Subrecipient obtains its proposed wage determination, it must submit the wage determination to (insert contact information for State recipient DB point of contact for wage determination) for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the State recipient Award Official).

(b) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the subrecipient shall monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.
- (ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2011 Full-Year Continuing Appropriation, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein:

Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient(s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request, and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s) shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid

fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor

responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient shall upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a). The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent

documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c). The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB . In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.